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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 15, 1989

2:00 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR HENRY MELLO

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

RICHARD C. LIVERMORE, Commissioner
Workers' Compensation Appeals Board

JOHN R. SULLIVAN, Commissioner
Workers' Compensation Appeals Board

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PROCEEDINGS

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CHAIRMAN ROBERTI: Governor's Appointees appearing today, Mr. Richard C. Livermore, Commissioner, Workers' Compensation Appeals Board.

Mr. Livermore, we'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position.

MR. LIVERMORE: I've been a professional mediator and arbitrator for 11 years, and as such have had to handle a broad diversity of cases as a professional neutral. Now that I'm asked to serve in that capacity for the State, I will continue to do my very best.

CHAIRMAN ROBERTI: Any opposition to Mr. Livermore's appointment? Are there any questions?

SENATOR PETRIS: Yes.

CHAIRMAN ROBERTI: Senator Petris.

SENATOR PETRIS: Are you related to the Livermore family that had a cabinet member under Governor Reagan here?

MR. LIVERMORE: Yes, sir, I am.

SENATOR PETRIS: How?

MR. LIVERMORE: Norman Livermore, Ike Livermore, is my uncle.

SENATOR PETRIS: That's very good openers.

However, you're going into a hornet's nest here. How long have you been on it?

MR. LIVERMORE: I served six months as of February 8th.

SENATOR PETRIS: Six months probably gives you a pretty good idea of the workings, the mechanics, and the basic purpose of the statute and so forth.

MR. LIVERMORE: Yes, sir.

SENATOR PETRIS: I often ask nominees if they can help us by making some observations as to how the agency is working, or more particularly, if there is an area where the Legislature can help to correct some defects in the statute.

Do you see any glaring problems that can only be solved by legislation that you might want to comment on?

MR. LIVERMORE: Frankly, Senator, my focus in these first six months has been to learn the existing process. I haven't applied myself to the task of trying to help amend it or otherwise change it, but I'd be glad to keep that as part of my focus.

SENATOR PETRIS: Will you?

MR. LIVERMORE: Yes, sir, and help you any way I can.

SENATOR PETRIS: Now, one of the problems that we've had with this agency for years is excessive delays that really work against the interests of the worker that it's supposed to serve. It's terribly frustrating.

Can you comment on that congestion and delay, and what might be done, or what is being done now to solve the problem?

MR. LIVERMORE: Well, from an administrative standpoint, I'm afraid I can't comment on much of that because I don't have much to do with the administration of the system.

From a judicial standpoint, however, as I mentioned in my first comment here, I've been a professional mediator and arbitrator for 11 years, and one of the major focuses of that particular branch of the legal profession, which is now known as the alternative dispute resolution profession, is that there are things that you do to help improve the judicial process, the dispute resolution process. Some of those things are, I'm sure you're well aware, mediation, binding arbitration, nonbinding arbitration, a number of alternative dispute resolution mechanisms that might be very, very helpful in helping deal with some of the delays in the Workers' Compensation judicial process.

SENATOR PETRIS: Are those being actively discussed now and considered?

MR. LIVERMORE: Frankly, Senator, I'm not aware of what is being discussed in those areas.

SENATOR PETRIS: Do you plan to urge them to look into it?

MR. LIVERMORE: If it's in my power to do so, I would -- again, I have a definite interest in that area; however, I don't know what -- if it is appropriate for someone of judicial --

SENATOR PETRIS: At your level you're not involved in that?

MR. LIVERMORE: That is correct, yes. I'd be happy to help and do whatever I can to use the benefit of my experience as far as it helps the system.

SENATOR PETRIS: There's a related question that just escaped me for the moment. I hope to think about it very shortly. It has to do, again, with the congestion.

The last time we looked into this, there was a federal mandate that apparently the Board was trying to carry out, which prescribed the precise number of cases per month that should be processed, and the electronic recording was part of the question of speeding up the process, and so forth.

Have you encountered any problem in carrying out a federal mandate as a condition of getting whatever federal funds come in?

MR. LIVERMORE: I'm not familiar with that problem, sir. No, sir. I haven't had a problem because I wasn't aware of the federal mandate, at least that has not been presented to us as something that we must do on the Workers' Compensation Appeals Board, at least in the six months I've been there.

SENATOR PETRIS: Do you have any particular charge from the Governor on things that he personally would like you to do? He's been a very strong critic of this whole operation, and he's demanded reforms from the Legislature.

Is there any mandate that you have that he's emphasizing in carrying out your duties?

MR. LIVERMORE: That I do the best and fairest job that I know how.

SENATOR PETRIS: He didn't single out any particular problem?

MR. LIVERMORE: No, sir.

SENATOR PETRIS: You mentioned judicial several times and you're a lawyer.

MR. LIVERMORE: Yes, sir.

SENATOR PETRIS: Do you regard the Board and its members as an exclusively judicial body? Or, can you also affect policy either through your decisions or otherwise?

MR. LIVERMORE: It's a very difficult question to answer. I can't imagine that the decisions that come through the Workers' Compensation Appeals Board don't ultimately have some effect on policy.

I would say, however, that that is something that is not -- I don't know that it's a direct impact, if what you're talking about is legislative policy, administrative policy. If you're talking about the legislative and administrative policy, I don't know that we have a direct impact, and we have not been asked to -- I mean, other than in this confirmation hearing -- to meet with the Legislature, or the Legislators or their assistants, or in fact, work with the administrators either. We just handle our cases.

SENATOR PETRIS: Let me tell you about one policy area.

We have complaints that at least are brought to my attention from opposing sources. One says the Board is wandering all over the place, that the broad range of issues presented is far too broad and strays away from the close reading of the statutory mandate.

The other critics say they're much too reluctant to reach into areas that really do come under the statute, so therefore, their action is much too narrow.

What is your feeling on that? Is it too broad or too narrow?

MR. LIVERMORE: Again, I don't feel at this point I'm really prepared. As I say, the focus that I've been undertaking in these last six months is to do the best I can to change into a judge, and I'd say that I'd perhaps like to also reserve comment and observation on that until after -- now that I have your question, I'd be able to --

SENATOR PETRIS: Okay, that's two.

MR. LIVERMORE: -- add to that. Yes, sir.

SENATOR PETRIS: How about workload?

MR. LIVERMORE: Three and fifty cases, approximately, a month cross my desk. And that is both new cases that come in and cases that I'm seeing again for the second, maybe third time; opinions that I'm signing.

SENATOR PETRIS: Are you expected to read all of them in one month?

MR. LIVERMORE: Well, the new cases come in at a rate of probably about five a day in my case. But when you get a case on recirculation, after -- we're members of three-judge panels, and after the other two judges have seen the cases, you often have to see a case again to see what the other judges have said to see whether or not you want to change or otherwise add to your opinion.

SENATOR PETRIS: One of the areas of complaint that I get is from injured workers. The worker really has to wait a long, long time. The remedy is supposed to be a speedy remedy. It was taken out of the courts. The defenses that the employers had were thrown out, like the fellow servant doctrine and so

forth, on the assumption that you're bound to have a certain number of accidents in an industrial society, so we ought to face up to it and provide some medical attention and disability payments, and so forth.

I've had complaints, and I have one still pending now from my district, in which the insurance companies involved absolutely refuse to carry out the orders of the Board, which have to do with paying the medical cost of surgery. It's been clearly established as necessary, and yet they just won't do it.

Now, you must have seen a few cases like that. What remedies can or will the Board apply if a petition comes in and says, "You ordered this company three months ago to pay for my operation. My doctor says if I don't get it in the next week, I'm going to be much worse off and maybe my life is impaired, in danger." What can you do?

MR. LIVERMORE: Well, as you know, that on petition by the parties, the Appeals Board does have the ability to issue a 10 percent penalty against the entire amount of the award which has been given to that particular injured worker.

If there is good cause to give that kind of penalty, it will be given.

SENATOR PETRIS: Is that the maximum you can do?

MR. LIVERMORE: Ten percent?

SENATOR PETRIS: Yes.

MR. LIVERMORE: Yes, sir.

SENATOR PETRIS: There's no provision for administrative fines or anything like that?

MR. LIVERMORE: Not that I'm aware of right now, sir.

SENATOR PETRIS: The cases that I'm talking about seem to me to be willful defiance.

MR. LIVERMORE: Excuse me. There are other penalties for willful types of conduct, but the basic delay penalty is a 10 percent against the --

SENATOR PETRIS: We have delay problems, too, but this is not just a delay. This is just a roaring defiance that says, "You guys can all go jump in the lake. We're not going to pay for this surgery." And if the surgery isn't done because of that, it creates a terrible problem for the injured employee and his family.

MR. LIVERMORE: We do have contempt power as well. And so, contempt proceedings in a very extreme case can be brought against --

SENATOR PETRIS: Have they ever been brought in the time you've been there?

MR. LIVERMORE: Yes, sir. Yes, sir.

SENATOR PETRIS: And reached the desired effect? Do any good?

MR. LIVERMORE: I don't know whether they have or have not reached the desired effect. I guess that depends upon the recipient of the contempt citation.

SENATOR PETRIS: Okay. I hope you'll watch for those guide posts. Thank you.

MR. LIVERMORE: Yes, sir.

CHAIRMAN ROBERTI: Any other questions?

SENATOR CRAVEN: Move Mr. Livermore's confirmation.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Livermore's confirmation be recommended to the Floor do pass.

The Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; confirmation is recommended to the Floor.

Congratulations.

MR. LIVERMORE: Thank you very much.

CHAIRMAN ROBERTI: The next appointment is Mr. John R. Sullivan, Commissioner, Workers' Compensation Appeals Board.

Mr. Sullivan, I'm almost reluctant to put you through this one more time, but we'll ask you why you feel that you're qualified to assume this position.

MR. SULLIVAN: Well, Senator, I've been in the Workers' Compensation community for over 30 years. I have served previously as a Commissioner, and subsequently served a year as Director, Administrative Director, of the Division, and here I am back, attempting to get confirmed again into my old seat as a Commissioner.

And I think the many years of Workers' Comp. experience that I've had in various jurisdictions qualifies me for this particular position, in addition to the judicial background that I had prior to my past incident.

CHAIRMAN ROBERTI: Senator Petris touched on it in his questioning of Mr. Livermore, and we've discussed it with you in the past: what can we do to do something about the backlog of these cases that seem to be proliferating?

MR. SULLIVAN: Well, of course, that is the administrative side of things, Senator. And I guess, you know, in the past when I served as the Director, which was an entirely different function from what I'm doing now, I guess I offered some opinions, and those were to try to develop some -- some more modern methods of handling the caseload, and all of which were short of adding a great deal of resources. I think I testified to that in the past.

I frankly haven't had any contact at all with the administrative side since I've moved over to the judicial function, and I haven't really found out whether any changes have been made. This has been a very busy little job, and a pretty difficult and very full day, and I haven't had much time to talk to the administration to see what kind of things are going on.

CHAIRMAN ROBERTI: Is there any opposition to Mr. Sullivan's appointment? Are there any other questions?

SENATOR CRAVEN: Move Mr. Sullivan's confirmation.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Sullivan's confirmation be recommended to the Floor do pass.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; confirmation is recommended to the Floor.

MR. SULLIVAN: Thank you very much.

CHAIRMAN ROBERTI: This was easier.

MR. SULLIVAN: Thank you.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:20 P.M.)

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of February, 1989.

Evelyn Mizak

EVELYN MIZAK
Shorthand Reporter

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SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ALONZO D. HALL, Chief
Bureau of Collection and Investigative Services

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PROCEEDINGS

--oo0oo--

CHAIRMAN ROBERTI: The next item on the agenda is the appointment of Mr. Alonzo D. Hall, Chief of the Bureau of Collection and Investigative Services.

Mr. Hall, we'll ask you what we ask all the Governor's Appointees - and we're happy to have you with us this afternoon -- and that is, why you feel you're qualified to assume this position?

MR. HALL: Thank you.

I first feel that I am qualified in that I have had 24 years of State service, most of which, or a lot of which has been in the law enforcement field. During the last 8-9 years, I've been a manager in State government.

I've had experience in the area of planning, in the areas of -- I've been the Chief of Management Consultation or Management Analysis, all of which have, in my opinion, have given me a great deal of experience, knowledge, and those things that are necessary to take on this task.

Prior to this, I was a manager over at the Department of Transportation. And as all of you know, it's a very large department. One of the things that I feel with the talent that I have that is probably very important is, I was one of the first -- I was the first manager to win the Sustained Superior Accomplishment Award, and probably established a management style that the Department liked and has encouraged its other managers to take on.

CHAIRMAN ROBERTI: Very good, Mr. Hall.

One point that has been a subject of some concern recently is that in California, there some 150,000 security guards, 20,000 of whom carry firearms. As best I can determine, the total training for these guards is very minimal in some cases, maybe a three-hour course for some.

What do you think we can do to beef up this training? Is your Department in a position to help in this area? Or, do you think the current requirements are sufficient?

MR. HALL: In light of the fact that that particular industry brings such adverse attention to itself, I've taken a strong look at it. I have met with the industry through the Advisory Board and also through their various associations, and also with the California Chiefs of Police Association and the Sheriffs Association, in trying to establish some method, as well as the schools that we license to train these people.

We now have formed a task force at the Bureau, comprised of members of all of those entities out there, in coming up with a plan for the two -- what we call a two-tier type of guard: one who is unarmed and the other one who is armed -- and the levels of training which the industry will agree to.

At the last Board meeting, I had probably the largest attendance that has ever been, and all of the people stood up and said, "Yes, this is what we need." So, we are moving forward in development of training for these guards, some more extensive training. And it will be in line with the types of training recognized by our law enforcement entities in the State of California.

CHAIRMAN ROBERTI: Thank you.

In a more general sense, what would you say the goals and priorities for the Bureau are?

MR. HALL: The goals and the priorities for the Bureau at this point are to take a look at all of the existing laws and look at the intent of the Legislature in its enactment of those statutes, and to bring into the light of day where the industries have grown and the laws are either handicapping them or handicapping us in allowing their progression.

There is the need as it relates also to protecting the consumers out there who purchase those services.

CHAIRMAN ROBERTI: Thank you.

Are there any other questions of Mr. Hall?

SENATOR CRAVEN: Move Mr. Hall.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Hall's confirmation to the Floor, recommendation do pass.

Is there any opposition in the audience? Seeing none, Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to nothing; confirmation is recommended to the Floor.

Congratulations, Mr. Hall.

MR. HALL: Thank you, Senators.

CHAIRMAN ROBERTI: You're welcome.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:12 P.M.)

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of March, 1989.

EVELYN MIZAK
Shorthand Reporter



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NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

SENATOR ROBERT PRESLEY

JACQUES S. YEAGER, Member
Board of Regents of the University of California

ANDREW D. LUCINE, M.D., Member
Board of Medical Quality Assurance
Division of Medical Quality

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: We'll take up Governor's Appointees. Andrew D. Lucine, Member of the Board of Medical Quality Assurance, Division of Medical Quality.

MS. MICHEL: Dr. Lucine's plane was delayed, and Senator Presley wanted to be here for Mr. Yeager.

CHAIRMAN ROBERTI: Please call him and we will have Senator Presley come, but we'll take Mr. Yeager now.

Jacques S. Yeager, Member of the Board of Regents of the University of California.

Mr. Yeager, we'll ask you what we ask all the Governor's Appointees, and that is why you're qualified to assume this position, which I know you've had for a little while now.

MR. YEAGER: Thank you, Mr. Chairman and Senators.

CHAIRMAN ROBERTI: Without objection, pictures will be taken. Hearing none, such will be the order.

We'll ask you once again why you're qualified to assume this position.

MR. YEAGER: Good afternoon, Mr. Chairman.

I believe that being a graduate of the University of California and took -- got a B.S. in Civil Engineering at Berkeley, I have been an alumni counselor. I've worked my way up to a Trustee of University of California at Berkeley, also a Trustee at the University of California at Riverside. I'm still a Trustee for the School of Engineering at Berkeley.

I have appreciated all those wonderful years I had there, and it is a thrill of a lifetime to have an appointment to serve as a Regent.

CHAIRMAN ROBERTI: One issue that has come up at the University is the admissions policies. One problem specifically is in regard to Asian admissions.

I know there was a memo which the University has since discounted as ever having any effect, but nevertheless, I think it was a few years ago, in the early '80s, indicating that the policy of the University would be to put a limit on Green Card immigrants who sought admission to the University. Most of those people are of foreign extraction, many are Asian. And subsequently there have been some pretty noteworthy cases where young people of Asian background have scored astronomically high, especially in the College of Engineering, UCB being the worst problem, and yet have been denied.

I'm told one of the problems is that the extra criteria that are used seem to change from campus to campus, so people don't know what criteria, other than SATs or grade point average, each college or each campus requires.

What do you have to say about that?

MR. YEAGER: Well, just this year, since I have been on the Regents, the Regents have taken a policy on admissions and turned it really back to each campus to come up with a plan. Those plans are being formulated now for admissions for each campus.

This was discussed because we do know that a very high percentage of the Asians do qualify under the California law, the top 12½ percent. And so, each campus is going to have to come up with that, Mr. Chairman.

CHAIRMAN ROBERTI: So, when are the reports going to become available?

MR. YEAGER: I'm not certain when those reports are, but I will get back to you and let you know.

CHAIRMAN ROBERTI: Very good.

We'll interrupt the questioning momentarily. Senator Bob Presley's here.

Senator Presley.

SENATOR PRESLEY: I just wanted to say, this is one of the finest gentlemen I've ever met, outside the Members of this Committee, of course.

(Laughter.)

SENATOR PRESLEY: And he's one that I've known for many, many years in the Riverside community. He's one of the better human beings in that he contributes continually of his time and energy to making life better for everybody there, and just a fine man.

I'd recommend him for whatever he was trying to achieve, I think, without any reservation.

CHAIRMAN ROBERTI: Very good, Senator.

MR. YEAGER: Thank you, Senator.

CHAIRMAN ROBERTI: You've got a good advocate with Senator Presley.

MR. YEAGER: I certainly have. We're very proud of him.

CHAIRMAN ROBERTI: We won't get any of our money bills passed if we do otherwise.

So, you were saying on admissions policies?

MR. YEAGER: Yes, I was saying that each campus has been authorized to go back and come up with a plan. I will let you know when those are to be received. I do not remember the date set for those this year.

CHAIRMAN ROBERTI: Are there any other questions of Mr. Yeager? Senator Petris.

SENATOR PETRIS: There are two or three areas I'd like to cover.

I've done some legislation in trying to beef up the proportion of underrepresented minorities in all of our systems, especially the UC and Cal. State systems.

We had some students visiting on this subject last week from the University. They had a press conference and called for new policies to address what they feel is really institutional racism. And they had some impressive statistics on the faculty level, the nonfaculty employees, and students. They said in this conference that:

> "At both U.C. Santa Barbara and
> ... Los Angeles only 34 percent
> of Black students graduate within
> five years"

while the rate for Caucasian students is double that, 68 percent, who do graduate within five years.

So, the retention rate is very low, and we've been conscious of that for some time. We've got to find the reasons and see what we can do about it.

Have you addressed that problem at all yourself? Has it come to your attention as a member of the Regents?

MR. YEAGER: Yes, it has, Senator. And I believe there are some new figures out showing that a nice gain has been made in this last year. And the University is -- the Regents are very anxious to see that percentage go up. And they're working very hard to do this, both in high school and in the city colleges, where we get transfers.

So, I think that we are making a gain towards that.

SENATOR PETRIS: Is there some program in place to accomplish it?

MR. YEAGER: Yes, there is.

SENATOR PETRIS: I know there's a program with a goal of 75 percent, and we haven't come close to that yet over a period of years.

Can you tell us any detail about how the Regents intend to accomplish the goal?

MR. YEAGER: I can't tell you all the things, because I've been so new as a member of the Board of Regents. But I do know that retention for all minorities is one of the very heavy programs that they are working on. And our outreach program to the colleges as well as to the high schools is just excellent now, and we think that that's going to help increase that percentage of retention.

SENATOR PETRIS: Are you yourself in favor of the program? Are you committed to it? Do you think it's a good idea?

MR. YEAGER: I am.

SENATOR PETRIS: Another area is toxics. There's a lot of fuss in San Francisco especially, my neighbors in the Laurel Heights area, who claim that the University is carelessly emitting dangerous toxics into the atmosphere. There's a lawsuit pending, as a matter of fact.

We've had legislation, Senator Roberti has had legislation on the prevention of that kind of problem, and I have had similar legislation for manufacturing generally, all kinds of installations. It's not aimed at the University per se, but it comes under that umbrella.

The question I have is, how much attention is the University paying to this problem, and shouldn't it be a high priority item in view of the increasing awareness we're having of the dangers involved in our overchemicalized society?

MR. YEAGER: That's an excellent question.

The University is aware of the lawsuits, and the Regents are, at San Francisco. As you know, that's where -- half of the meetings that we attend are in that facility.

We do -- I do know there's a very serious study going on, and the University is very concerned with all its EIRs in the future for all its programs.

And I personally, Senator, feel just like you do, that it's a very big problem, and we have to work on it.

SENATOR PETRIS: The thrust of our legislation was to establish standards in industry, a slightly different approach but that was the main thrust. It established standards, especially by way of prevention and have members of industry do their own inventory and come up with a plan.

Well, my bill had that; it didn't pass, but that's what I was trying to do: come up with a plan and project it over the years to establish high goals.

I don't know what kind of goals the University has set for itself.

MR. YEAGER: If I remember right, there is a study going on to work on this in the future for our fine state under our Department of Agriculture for the University. And I think we're very conscious of this, and it is a budgeted item.

I'm not sure whether they come to you for the money, or whether it comes right through the system; I'm not sure of that.

But I will be happy to look into that and get back to you.

SENATOR PETRIS: I would appreciate that, and also what research, if any, is being done to help minimize the problem that arises out of industrial plants? There must be some kind of research going on at UC somewhere.

MR. YEAGER: I'm not familiar with that, but I will look into that, too.

SENATOR PETRIS: I would like to know.

MR. YEAGER: All right.

SENATOR PETRIS: Another area where I've carried legislation is affirmative action. You mentioned it in your opening or in answer to one of the questions.

About a year and a half ago, we had a report from the Postsecondary Education Commission. It was entitled, "Women and Minorities in California Public Postsecondary Education." The following is a primary conclusion of that report. Now, mind you, this is a year and a half ago. It says:

> "The public postsecondary institutions have each created programs for recruiting, upgrading, promoting and retaining women and minority faculty members and staff. Nonetheless, progress in enhancing diversification has been slow if evident at all; and women, Blacks, and Hispanics remain seriously underrepresented among both faculty and administrators in all three segments."

My own conclusion is parallel to that based on talks with faculty members, with students, reading whatever reports have come out from time to time.

I, for one, would like to see this accelerated as much as we can. It seems to me to be an honorable and noble goal for our society as a whole.

One thing that came out in May of last year regarding Hispanics, it says:

"No Latinos are employed among the
122 persons working in the offices
of the Board of Regents [themselves]."

You know, it takes a daily awareness and sensitivity, in addition to a program with noble goals. We have to think about it every day if we're really serious about it. I thought that was kind of disproportionate, zero out of 122.

Now, that was May of last year. Hopefully, there's been something done about it since, at least filling retirement slots with people qualified to represent some of the other groups.

Do you have any comment on that?

MR. YEAGER: Yes, Senator. It's a very high priority item with the Regents and with the University itself.

As you probably know, in the five years the amount of undergraduate students have doubled in minorities, and the University's program in the future is to increase that.

I happen to know at our local campus at UCR how carefully they are working, and how hard they're working to find minorities to fill administrative spots as well as faculty spots also.

And so, I think it's all through the University. The Regents are very conscious of this.

SENATOR PETRIS: Which campus, or two or three, have made the most progress?

MR. YEAGER: I'm not sure. I do know that UCR has made a lot of progress, but I think all the campuses have done very well.

SENATOR PETRIS: Thank you.

MR. YEAGER: You're welcome.

CHAIRMAN ROBERTI: Any further questions?

Is there any opposition in the audience?

SENATOR CRAVEN: Move Mr. Yeager.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Yeager's confirmation to the Floor, do pass.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote's five to nothing; nomination is recommended to the Floor.

Congratulations.

MR. YEAGER: Thank you, Mr. Chairman, and I appreciate it very much.

(Thereupon the Rules Committee proceeded with legislative items on the agenda.)

CHAIRMAN ROBERTI: The next appointment is Dr. Andrew Lucine -- please come forward, Doctor -- a Member of the Board of Medical Quality Assurance, Division of Medical Quality.

Senator Craven, I'm going to turn the Chair over to you. I have a meeting next door, and I shall be back momentarily.

SENATOR CRAVEN: Very well. Thank you, Mr. Chairman.

Dr. Lucine, would you please tell the Members of the Rules Committee why you feel that you are qualified for the job to which you have been nominated?

DR. LUCINE: I've had experience with the Staff Survey Committee for a number of years. It's a committee of the CMA, the California Medical Association, which I felt was preparatory to disciplinary measures, that I felt I was qualified for years ago at my first appointment.

I think I have continued to be on that committee and carry out the cuties and the activities of the Board in the last four years as well.

SENATOR CRAVEN: So, basically this is a reappointment for you?

DR. LUCINE: Yes, sir.

SENATOR CRAVEN: Do any of the Members have any questions of Dr. Lucine?

SENATOR PETRIS: Yes, Mr. Chairman.

SENATOR CRAVEN: Senator Petris.

SENATOR PETRIS: I may have a little bias here, which I'll put up front.

Senator Presley, who just left, has been carrying some very tough legislation jumping on us lawyers, or on the Bar Association, that is, for failure to discipline its members. There was, for several years, a real outcry against some terrible things that lawyers were doing without being subjected to proper disciplinary procedure. It's improved enormously because of new legislation.

We get the same kind of reports for doctors, and some condemnations that BMQA is doing hardly anything to discipline doctors in comparison to the numbers and types of complaints.

In 1986, there was a report in the San Jose Mercury, which is quite a newspaper. It does a lot of in-depth studies, very responsible manner. It doesn't just fly off the handle. They ran a series of articles which pointed out some flaws in BMQA's disciplining functions, including allowing physicians who had been convicted of crimes such as murder, child molestation, drug trafficking, to remain in practice. The inadequacy of their investigatory staff to keep up with the increasing complaints against physicians was cited, and the small number of complaints resulting in any formal action by the Board, just a tiny percentage.

A couple years later, the Assembly Office of Research released a report, which was also critical of BMQA for not doing enough to encourage public access for the flow of complaints. It was found at that time in several cities there was no listing in the directory for BMQA. So, if a person had a legitimate complaint, they didn't where to go to file a complaint, to call it to the attention of the regulatory body.

Since then, they've added a lot of listings in directories around the state, but there again, that's something they should have done naturally, rather than waiting for some critical report from somebody to point out, "You don't have a listing here. How are people going to have access to your Board?"

This year -- we go from '86 to '88 to this year -- the Center for Public Interest Law announced that it was planning to release a year-long study of inadequacies in the disciplinary system. The report, which isn't out yet but we know a little bit about it. It's expected to focus on ways to speed up the process. This is the same complaint we had against the Bar: very slow; dragging its feet to the point where the complaining client got so discouraged, you know, that either nothing happened, or it took so long that it lost the impact, you know, of at least the image of swift investigation and action by the governing authority.

As a matter of fact, Senator Presley has announced that he's going to carry legislation relating to doctors; the same type that he carried relating to lawyers.

And then the last critic is the Little Hoover Commission, which carries a lot of weight around here and enjoys a lot of respect. It's a good, strong, bipartisan agency which includes some Members of the Legislature serving on it. They found serious problems with the standards of medical care in nursing homes.

Now, anybody who's been in practice and a lot of us laymen know that that's been a problem in California for a long time. The report singled out BMQA, and the Division of Licensing of the Department of Health Services, finding that BMQA has neither adopted standards of care for nursing homes nor instituted a fine and citation system for physicians who provide inadequate care in those homes.

Those are, you know, pretty serious charges.

The report recommended that a system of peer review be established in nursing homes similar to that that's required in hospitals, acute care hospitals.

The also recommended, the Little Hoover Commission, that they adopt standards of medical care and a fine and citation system for physicians who are actively involved in providing care in the nursing homes, and that the investigators be given authority to review patient records in long-term care facilities where they suspect patient neglect on the part of the medical people.

There's several other recommendations. One final one I'll point to is -- well, I'll let it go at that.

The point I'm making is, there's obviously a serious problem which BMQA apparently has failed to recognize, or has failed to act on, according to three separate sources who have done a thorough job of looking into it.

So the question is, in the year or so that you've been there, a little less than a year --

DR. LUCINE: No, I've been there four years.

SENATOR PETRIS: You're a reappointment, okay.

Well, how do you react to these criticisms? I imagine you're familiar with this, and you hear it a lot. I'd appreciate your specific reaction to it, and what suggestions the Board may have, or what you personally may be planning to do to correct the situation as far as possible in putting more teeth into the disciplinary process?

DR. LUCINE: I think that the Board has -- I feel the Board has acted responsibly with the disciplinary actions that it has taken on those cases of physicians brought to its attention over the last four or five years.

I think that there may be deficiencies in the system of not being able to pick up people before there is some problem. And that, I think, is a problem that address, let's say, the profession of medicine before the Board level. There must be some better way, not necessarily Board-sponsored, but some better way to find the incompetence before the act is accomplished, shall we say. More preventive practice than --

SENATOR PETRIS: How could that be done?

DR. LUCINE: That's a monumental problem. I don't know that it could be done.

SENATOR PETRIS: It needs some kind of network.

DR. LUCINE: That way, you're trying to weed out the competent from the incompetent. And I still like to think that the vast percentage of physicians is competent rather than incompetent. So, I don't think we want to spend an awful lot of time and effort establishing that a person is competent if there are better ways to detect the incompetent ones.

I think that the Board is responding or has tried to respond to areas were it feels that it is -- has been inadequate. We're just recently trying to obtain permission and obtain legislation so that the coroners of all the counties will report to the Board where there has been is a suspected problem of examinations they do on the mortuary -- on the dead bodies. That has not previously been reportable to the Board. So, that the coroners' deaths -- the coroners throughout the state have not had any access to the Board through any reporting mechanism, which we hope to provide.

SENATOR PETRIS: Dr. Quincy reports out all the time on T.V.

DR. LUCINE: He's no longer on T.V.; is he?

SENATOR PETRIS: No, I haven't seen him. They're working on reruns right now.

How's that going to be brought about? Will that be a request from BMQA to the coroners, or do you need some legislation?

DR. LUCINE: We need to get some legislation to allow the coroners to report, or provide it -- make it enforceable that they -- mandatory that they report.

SENATOR PETRIS: Aren't any of them reporting at all now?

DR. LUCINE: Some do, but it's very, very sparse.

SENATOR PETRIS: Not high on the list?

DR. LUCINE: Correct.

SENATOR PETRIS: It sounds like a good move to me.

DR. LUCINE: That's why I wanted to point it out to you, that the Board has its problems, but this is one area where we've recognized it and trying to improve it.

SENATOR PETRIS: Some of us have been concerned about the nursing home situation for a lot of years. I mean, I carried legislation 20 years ago, trying to bring about some reforms. We just haven't accomplished it.

What is your reaction to the Little Hoover suggestion about peer review with respect to the nursing homes?

DR. LUCINE: I made these comments at the Board meeting on Friday in Los Angeles, when the Little Hoover Commission people reported to us a summary of their report. And I will repeat those comments in some form right now.

I skimmed through and I think I read the report and major parts of it. And I feel that they're probably correct, but I think that the Little Hoover Commission has failed in a real responsibility and obligation that it has to the Legislature, which is to point out the primary problem, or one of the major problems, with care in nursing homes.

SENATOR PETRIS: Money.

DR. LUCINE: Meaning that there is no appreciation on the part of the Legislature and/or society to try and fund those homes.

I think if this report comes out and is interpreted by those who are working in the nursing homes -- the nursing staff, the LVNs, and the Aides who do the care -- and they take this as an interpretation of downgrading of their abilities and their

occupations, that's going to hit them, and morale-wise, I think there's going to be a real problem in nursing homes.

They're not there for the money. And the people that they're caring for is, in medical circles, is the toughest type of patient to care for.

SENATOR PETRIS: Well, that's been a chronic shortage, but it seems to me your whole group ought to be beating the drum. You're all appointed by the Governor. That's the fountain of all monies that go into the budget.

I would urge you, if you have strong feelings on that, I certainly recognize that's a problem. That was a problem with my legislation 20-plus years ago. Didn't have enough money to accomplish the purpose. I held out money as a carrot to accomplish the reforms. Rather than punishment, we emphasized the carrot: if you upgrade the standards, you provide more medical people, you have doctors visit more frequently, you do this, you do that, you get more money to hire better people, better trained people, and so forth.

And the board and care homes, we computed, or some witnesses computed, owners, that their income was about 21 cents an hour when all things were considered. Not a very profitable return on their investment, and their sweat, and tears, and blood, and so forth.

Apart from the lack of funds, are you saying that if these were adequately funded, the reforms suggested could be accomplished and should be?

DR. LUCINE: I would think so.

I think it's going to be a difficult problem to obtain peer review in nursing homes.

SENATOR PETRIS: It's tough enough just getting a doctor to go in there in the first place.

DR. LUCINE: Yes, but also when it mentions setting up standards of care, there may be, let's say, 120 or 150 people in a nursing home, each with a different disease. And how to maintain the standard of care for that particular problem in a nursing home situation is -- it could be done, I guess, but it hasn't been attempted, to my knowledge, anywhere in the world. So, it would take a combination of both effort, money and expertise.

SENATOR PETRIS: Well, I think -- I haven't read the report -- but I have a hunch if it's like similar criticisms in the past, it has to do with number of hours per year that a facility has the benefit of access to a doctor. I think you'll find a lot of facilities hardly ever see a doctor. And some, when they do, when I was doing the investigating in the Assembly, they just walk through, don't spend much time because time is precious and limited, and so forth.

Well, do you have any other comments on any of those criticisms?

DR. LUCINE: I will have a personal comment about your comments and compliments to the Mercury News article. That's sort of my home base. There are many issues in that article that I think were contested and still would not stand the test of scrutiny and objective evaluation.

SENATOR PETRIS: You don't think it was an accurate report?

DR. LUCINE: Parts of it were inaccurate.

Some of it was accurate, yes, but the publicity that obtained was, I would say, the notoriety that it produced, I think, were unfounded.

SENATOR PETRIS: We've had some pretty bad experiences in Oakland over the last few years. People dying in those homes, unattended, and so on and so forth.

Let's reject the inaccuracies and work on the ones that are accurate.

DR. LUCINE: Uh-huh.

SENATOR PETRIS: Thank you very much.

Thanks, Mr. Chairman.

CHAIRMAN ROBERTI: Thank you.

Senator Craven, you made a motion?

SENATOR CRAVEN: I will be very happy to make a motion.

CHAIRMAN ROBERTI: I'll leave you in the Chair.

SENATOR CRAVEN: Fine.

Let me just digress from what we were talking about.

Are you a Philadelphian?

DR. LUCINE: Yes, sir.

SENATOR CRAVEN: I noticed you went to Haverford and then the University of Pennsylvania.

DR. LUCINE: That's right.

SENATOR CRAVEN: Where Senator Petris also did some studies, the University of Pennsylvania.

I went to school a couple miles to the west at Villanova.

DR. LUCINE: I'm happy to know that.

SENATOR CRAVEN: As an old Keystoner, I'm happy to welcome you here today --

DR. LUCINE: Thank you.

SENATOR CRAVEN: -- and take great pleasure in moving your confirmation.

CHAIRMAN ROBERTI: Senator Craven has moved.

Any discussion or debate? Any opposition?

Secretary, call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to nothing; confirmation is recommended to the Floor.

Congratulations.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:37 P.M.)

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of March, 1989.

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ROOM 113

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WEDNESDAY, MARCH 29, 1989

1:52 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

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SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JOHN M. PRICE, Member
California State Lottery Commission

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: The Committee will come to order.

We will take the Governor's Appointment up first: Mr. John J. Price, Member of the California State Lottery Commission.

Mr. Price, we'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MR. PRICE: Well, Mr. Chairman, Members of the Committee, I'm currently serving as Vice Chairman of the Lottery; served as Chair during the calendar year 1988, my original appointment.

My nomination for a new term will fulfill the Lottery Act requirement that one member have at least five years' experience in law enforcement. I served as District Attorney for Sacramento County for twenty years.

Your Committee very kindly approved me four years ago --

CHAIRMAN ROBERTI: I recall.

MR. PRICE: I would appreciate it if you'd approve me again.

CHAIRMAN ROBERTI: We just might, even though my numbers haven't shown up yet.

(Laughter.)

MR. PRICE: Thank God I don't have that problem.

CHAIRMAN ROBERTI: Any questions? Senator Petris.

SENATOR PETRIS: What happened to the system today, and why the timing?

MR. PRICE: Oh, the two-hour --

SENATOR PETRIS: It blew out on the day you're here for confirmation. Any connection there?

(Laughter.)

MR. PRICE: No. I forget what you call the -- Haylon, the fire retardant. It came down, some short in the system at GTech., and it was down for two hours. It's now back in operation.

SENATOR PETRIS: It's okay now.

MR. PRICE: I see this young lady nodding. She must have made a bet after it came back on.

SENATOR PETRIS: She had the winning combination and went to get one, and it was closed down.

(Laughter.)

MR. PRICE: It's up and going now, Senator.

SENATOR PETRIS: Yes, thank you.

CHAIRMAN ROBERTI: Are there any other questions? Is there any opposition in the audience?

SENATOR CRAVEN: Move Mr. Price.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Price's confirmation to the Senate Floor with a do pass recommendation.

Secretary, call the roll.

SECRETARY WEBB: Senator Beverly. Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is three to one; confirmation is recommended to the Floor.

Congratulations once again.

MR. PRICE: Thank you, Senator.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 1:55 P.M.)

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of March, 1989.

Evelyn Mizak

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Shorthand Reporter

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1:58 P.M.

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Evelyn Mizak
Shorthand Reporter

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SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

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ALSO PRESENT

ALFRED H. SONG, Member
Board of Medical Quality Assurance
Division of Allied Health

HENRY B. CHAVEZ, Member
California Horse Racing Board

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: The next item of business is Alfred H. Song, Member of the Board of Medical Quality Assurance, Division of Allied Health.

We'll ask you what we ask all the Appointees, why you feel you're qualified to assume this position.

We all know you so well, if you want to say anything in your own behalf -- he doesn't.

(Laughter.)

SENATOR MELLO: Move.

CHAIRMAN ROBERTI: Senator Mello moves that Senator Song be confirmed to BMQA.

Is there any opposition? Seeing none, Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to nothing; confirmation is recommended to the Floor.

You go down on record as the shortest confirmation we have ever had.

MR. SONG: Thank you, Mr. Chairman, ladies and gentlemen of the Senate.

SENATOR PETRIS: Can we ask him some questions now?

(Laughter.)

CHAIRMAN ROBERTI: The next one is Henry B. Chavez, Member of the California Horse Racing Board.

Mr. Chavez, we'll ask you the question we ask all the Governor's Appointees, why you feel you're qualified to assume this position.

MR. CHAVEZ: Well, first of all, I've been on the Board for the last four years now, and I've learned a great deal about the workings of the Board.

I've been in agriculture for about the last 25 years in the State of California. And one of the main purposes of the Board is to promote and increase agriculture in the State of California, and horse racing is one way of doing that.

And my experiences in management is one of the other reasons.

CHAIRMAN ROBERTI: I do have concern about one issue that has taken place that comes before your Board.

In 1987, SB 14, by Senator Maddy, was passed regarding satellite wagering. There was a labor provision in which representatives of various parties and Legislators had worked out what they thought was a compromise, and it regarded recognition of the historical role of some race track unions at satellite facilities.

Many people are concerned that the provisions of SB 14, trying to work this out, haven't been carried out.

I wonder if you know about the legislation; what your plans are to implement it?

MR. CHAVEZ: Well, I think that one issue came up at one -- I believe one situation concerning the Del Mar facility.

CHAIRMAN ROBERTI: Yes, Del Mar.

MR. CHAVEZ: I think the Board's intention is to carry out the intent of the legislation.

CHAIRMAN ROBERTI: You don't see any problem with what the Board is going to try to do?

MR. CHAVEZ: I really don't see that happening, at least from my perspective.

CHAIRMAN ROBERTI: Is there any opposition? Any questions? Senator Petris for questions.

SENATOR PETRIS: Thank you.

On the labor thing, my concern is broader than the Maddy agreement, which I thought was an excellent step. My feeling has been that the Board really hasn't lived up to that agreement. In the prior interrogation of other members who have appeared in the last couple of years, I've gone over this pretty thoroughly with them.

Let me start from square one. I'm an employee of a race track. I have a grievance, and I take it up with the shop steward. They talk to management, and it's not resolve.

Where do I go from there?

MR. CHAVEZ: Well, I think then usually a complaint is filed with the Board indicating that the contract isn't in place. And that usually -- that brings it to the attention of the Board at that point in time.

SENATOR PETRIS: Is that the last resort?

MR. CHAVEZ: No, it's not the last.

SENATOR PETRIS: This is not a bargaining --

MR. CHAVEZ: No, we have --

SENATOR PETRIS: -- for a contract. This is one individual employee who feels that he's been abused and treated unfairly, and so forth, and he's seeking a remedy.

MR. CHAVEZ: Usually I don't think the Board gets involved in something individual.

SENATOR PETRIS: There's no other avenue for that worker, is there? They're not eligible to go before the NLRB.

MR. CHAVEZ: They have their union.

SENATOR PETRIS: But the union can't solve the problem. It's management that has to give the okay.

MR. CHAVEZ: In a number of cases, we have -- we don't get involved in actually negotiating or mediating discussions between management and labor. We have played a role in being a referee or at least an interested observer on a number of occasions. In fact, I've recently been appointed to hear a complaint between labor and management concerning one of our tracks down south.

SENATOR PETRIS: Is there an appeal process after --

MR. CHAVEZ: I don't know, Senator.

SENATOR PETRIS: -- the labor-management discussions? An appeal process to the Board itself? You don't get into that?

MR. CHAVEZ: I don't know, sir.

SENATOR PETRIS: I don't mean you personally, but the Board?

MR. CHAVEZ: I think the Board's main concern is to see that the contracts are lived up to on both sides of the issue.

SENATOR PETRIS: How do they do it?

MR. CHAVEZ: Well, they bring it up -- they'll -- the staff will work on it first. If they can't resolve it, they usually come before the Commission for us to discuss.

SENATOR PETRIS: It's all pretty much in house. There's nothing beyond that, like a labor board?

MR. CHAVEZ: Not that I know of, no.

SENATOR PETRIS: Do you have a lot of disputes pending now?

MR. CHAVEZ: Not many that I know of.

SENATOR PETRIS: Are all the machines now the tellers?

MR. CHAVEZ: Pretty much so, yes.

SENATOR PETRIS: There aren't any problems?

MR. CHAVEZ: No.

SENATOR PETRIS: A different subject, thoroughbreds and drug abuse. There've been some problems there. Assemblyman Floyd has written a letter urging the Board to take action and criticized the Board for not doing it after numerous complaints have been made.

Can you enlighten us on that at all?

MR. CHAVEZ: Well, I'm not part of the Medication Committee, but the Medication Committee has been working on this issue for the last two years. More recently it's been -- made the papers and been fairly noticeable, but the problem's been something that the Medication Committee, which is part of our Board, has been working on.

It all -- we're working in an area of some very sophisticated drugs that are being implemented and used in horse racing. We have done -- taken a number of steps, and we are working on others at this point in time, to tighten up this situation so we can bring it under control, if it is as big a problem as it seems to be.

SENATOR PETRIS: There's a study done by the Horseman's Benevolent and Protective Association. I'd like to repeat that title because it's fascinating. I don't know who the benevolence is for: for the jockeys, or the horses, or customers. At any rate, it's called California Horseman's Benevolent and Protective Association.

According to their study, the use of illegal performance-enhancing drugs in racehorses in California may have reached epidemic proportions. That's why I raised it.

MR. CHAVEZ: See, the problem we've had is trying to detect whether these drugs exist or don't exist. Out testing procedures have not been that positive in every case. We're getting positives and negatives on the same samples.

SENATOR PETRIS: Mixed results.

MR. CHAVEZ: Mixed results.

SENATOR PETRIS: I wonder what their source of information is?

MR. CHAVEZ: They're doing some testing on their own. I think everybody in the industry who's interested in horse racing has been trying to get this thing under control. So, they're working on the issue as well as the Board.

SENATOR PETRIS: Do you think they're using different tests?

MR. CHAVEZ: Yes, they're using an amino assay type test.

SENATOR PETRIS: Is that more accurate?

MR. CHAVEZ: It's more sensitive in some cases, but it's not always more accurate. You get false positives with it also.

SENATOR PETRIS: I guess that has the same degree of error as testing humans has, or at least --

MR. CHAVEZ: I would say so, yes.

One of the things we're doing, of course, in our procedures in how we handle the samples, after we take the samples from the horses, our quality assurance -- we're working with the California -- U.C. Davis, and hired them to work with us in helping us in the area of quality assurance of our samples. We're running -- taking samples and running parallel samples through different labs to make sure that when we do get a positive, we can confirm that positive.

We've also tightened up the chain of evidence information so that if we do get the positive, we can take this to hearing and come up with a decision that we can carry through and not have it reversed.

SENATOR PETRIS: What is the penalty if it's found to be true?

MR. CHAVEZ: If it's positive, and it's a prohibited drug, we usually suspend their license and fine them.

The most recent one that we decided, just ruled on this just last week, was a hundred -- I think 120 days in suspension.

SENATOR PETRIS: Is that racing days or calendar days?

MR. CHAVEZ: We suspended his license for a year, for 120 days, and fined him $3,000.

SENATOR PETRIS: Just a couple other areas.

You're from where?

MR. CHAVEZ: I'm from Bakersfield, California.

SENATOR PETRIS: Technically that's Northern California, north of the Tehachapis.

MR. CHAVEZ: I think I'm almost on the boundary. I think Delano seems to be where they break.

SENATOR PETRIS: It's a lot closer to L.A. than Sacramento is.

I'm asking that, of course, this is not within your power, but if you count Bakersfield as closer to the South than the North, then all seven Board members are from the South.

Traditionally, up to now, there's been some kind of balance, some kind of representation. There are tracks up here, and people in the North love to go to tracks as well.

That kind of bothers me. There are times when there's a North-South fight on allocation of racing days, and so forth. It seems to me to be tilted much to heavily in one direction.

Now, I'm speaking to at least three colleagues from the South, I realize that.

CHAIRMAN ROBERTI: If we use our line of the Tehachapis as the --

SENATOR PETRIS: Then it's six out of seven.

CHAIRMAN ROBERTI: I guess Mr. Chavez just strikes me as sort of the wrong person to raise the point with. He's the furthest north you've got.

SENATOR PETRIS: Well, I want to raise his sensitivity to future issues as they come up.

The final one I have is on the basic question of why we need to have the Horse Racing Board, and give them the jurisdiction to do all these things?

It's been suggested that it's better to just abolish it and let private enterprise run its course and go unregulated.

Does that appeal to you?

MR. CHAVEZ: Well, I think if you're going to have betting, and try to keep it under control, keep it run legally, I think you're going to have to have some kind of a State board in order to regulate it, to carry through the Assembly's wishes. I think if you don't, we're going to have chaos in racing.

If we didn't have a Board, you might see a demise in racing in some of the Northern areas, quite frankly.

SENATOR PETRIS: What's the most important part of your duties? Is it the betting part that needs to be monitored, or is the horsemen and their horses?

MR. CHAVEZ: All facets of the industry are pretty well monitored because there's -- quite frankly, there's quite a bit of -- a lot of vested interests in all aspects of it. There's the horsemen's interests, the trainers, the associations, the labor, the employees. They all have an interest, and basically we're there to try to make sure that everybody gets a fair shake.

SENATOR PETRIS: Thanks.

CHAIRMAN ROBERTI: Is there any opposition in the audience?

Then Senator Beverly moves confirmation. Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to zero; confirmation is recommended to the Floor.

Congratulations.

MR. CHAVEZ: Thank you.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:22 P.M.)

--oo0oo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of April, 1989.

Evelyn Mizak

EVELYN MIZAK
Shorthand Reporter

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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 12, 1989

2:00 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

CLAIR W. BURGENER, Member
The Regents of the University of California

SENATOR WILLIAM CAMPBELL

ARNOLDO S. TORRES
American G.I. Forum; Progreso, Inc.

ERIC D. VEGA
Mexicam American Legal Defense and Education Fund

RUDOLFO C. AROS
SCR 43 Advisory Committee Member

JESSE ORTA
LULAC; American-Mexican War Mothers Association

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P R O C E E D I N G S

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SENATOR CAMPBELL: Now I'd like to officially endorse a very distinguished former California State Senator, California State Congressman, an outstanding Californian, Clair Burgener, for appointment to the office of Regent of the University of California.

CHAIRMAN ROBERTI: Very good, thank you. I don't think he'll have too tough a time.

Now we will take up Governor's Appointees, Clair Burgener, Member of the Board of Regents, University of California.

Senator, Congressman, please come forward. We'll ask you what we ask all the Governor's Appointees -- you don't really have to even give us much of an answer, I would say -- why you feel you're qualified to assume this position.

That's what we normally ask, but I think we know your background very well.

MR. BURGENER: Thank you very much, Mr. Chairman.

I think my best qualification is 24 years of public office, including service in this body for six years; as a matter of fact, a member of this Committee; a member of the Senate Education Committee; a member of Senate Finance Committee; and four years in the Assembly, and ten years in the House of Representatives, and four years on the San Diego City Council.

I think it's a good preparation and a good, broad public policy background.

CHAIRMAN ROBERTI: I agree.

Is there any opposition to the appointment in the audience? Please come forward.

Please state your name.

MR. TORRES: Mr. Chairman, my name is Arnold Torres. I'm representing the California State American G.I. Forum, and Progreso, an organization here in Sacramento.

I come before you, and it's an unfortunate situation that we're in, because every time we come before this Committee on nominations, we have to bring in a number of other issues that, at times, the Rules Committee feels are the purview and jurisdiction of other committees in the Senate and Legislature. But unfortunately, that is the process that we have, and we will simply follow through with it.

The nomination of Mr. Burgener to the UC Regents is of concern to the G.I. Forum here in California for the following reasons.

By the year 2000 to the year -- in between the year 2000 and 2010, the Latino population will be 30 percent of California's population; Asians will be 13 percent; Blacks will be 8 percent. The White population will be less than 49 percent. About the same time, three-quarters of our retirees will be White, and approximately 60 percent of the workforce will be persons of color.

According to a report that the Joint Committee on the Master Plan for Higher Education indicated, of 1,000 White students entering the ninth grade in California, 56 will receive

a B.A.; of the 1,000 Asians, 176 will receive a B.A.; of 1,000 Blacks, 16; and of 1,000 Latinos, 14.

The report, as well as several other documents that have come out in this decade -- specially the well-known and discussed Vision California 2010, the Governor's California Economic Development Corporation's report -- indicates that we are going very quickly towards a society in which we have dual societies: we have the rich, and we have the poor. And one of the major institutions that every report cited, has indicated has a prominent role, the key role in dealing with this problem, is the UC system.

I think that Members Petris and Roberti understand that this is not a new issue to both of you or to this Legislature and to the Senate, but it is an issue that, unfortunately, has received virtually no real action from the Governor, from the Regents, and in all candor, even from the Legislature.

The Regents enjoy a hands-off situation because they are constitutionally separate, and unfortunately, we have not challenged that separation, even though failure to challenge it is, in fact, causing great failure in American society, especially in California.

And what we believe is needed is a tremendous amount of leadership; leadership from the Legislature, not to issue another Master Plan, not to issue another Vision 2010, but to honestly propose legislation that will change the appointments of the Regents, that will in fact change, in fact maybe even elect members to the Regents from the California populace. If it

requires Constitutional amendments, then we ought to pursue that. If it requires propositions, then we ought to pursue that.

What we need is that type of drastic structural change in the UC system in order to seriously address the difficulties that, I've indicated earlier to you, would simply be compounded by the failure to address the problem.

Mr. Burgener is a distinguished member, your colleague. I do not anticipate this body opposing him, not confirming him. Mr. Burgener is not John Tower. He is far from it. He will not have his colleagues spurn him. And I think that he has distinguished himself in the minds of his colleagues in various other institutions, in politics, in his history. So, I do not anticipate that.

And it is unfortunate that there is a tremendous amount of controversy in certain quarters in the Hispanic community with regards to Mr. Burgener's nomination. On one level, there is concern that the leadership that is required to improve the hiring of Hispanics in the State system has not come about. Progress has been made; no one doubts that. No one contends the opposite. But whether it's been what it could be and should be is, in fact, a major concern that Hispanics have.

Second point with regards to his tenure as Chairman of SPB. There has been and continues to be a tremendous amount of discussion as to how fair the Board has been in dealing with adverse action cases dealing with Hispanics in the state. Not simply celebrated cases that have come to your attention, but systemic difficulties with Blacks as well as with Hispanics.

Now, Mr. Burgener himself has indicated, very candidly, that he is not and does not consider himself a person who is a lone wolf. He is not a crusader. He likes to work within the system, and I think his history reflects one of comportment of that manner. He has, in fact, worked very much within the system, and I think the fact that he's been elected to the positions that he has held underscores the acceptance that the public has of the manner in which he operates.

But unfortunately, the type of position, the type of person that we need -- we, not just Hispanics, but the State needs at the UC Regents -- is a person who in fact will be a crusader; is in fact a person who will break down barriers and, if need be, resign in a symbolic act to expose that probably most elite club, much more elite than, in fact, the United States Senate is, in our opinion, up to now.

And we believe that it is that type of commitment that is required to address the problems which are so generationally, almost now, entrenched within the UC Regents.

Adding insult to injury, on this report, 2010, the infamous -- and we refer to him now as "infamous" in the Hispanic community -- David Gardner sat on the report board, and yet, since March of '88, when this report was issued, Mr. Gardner has done little, if anything at all, to give a response as to how the UC system is going to respond to the issues raised in the California 2010 report.

So, it is with -- it's almost a dilemma for us to come before you. We know that you are fair; you do listen to us.

But unfortunately, Mr. Burgener is your colleague, and he is only one man.

There are questions, as I've indicated, as to where his commitment has stood in the past. He is controversial for some comments that he's made. I know that he's apologized for them, but nonetheless, the impression has been cast, and it is very difficult to wash away.

I think that for these reasons, we certainly, in the American G.I. Forum and in the Progreso Organization of Sacramento, have absolutely no choice but to indicate our opposition to Mr. Burgener's nomination.

We would ask and we will follow up -- and I apologize for not having written testimony -- but we'll follow up with written testimony, and a specific set of recommendations to the Rules Committee, who we regard as the leadership of the Senate. The Rules Committee is, in fact, regardless of the political statements that any of you may make, it is the most powerful Committee in this Chamber, and reflects the leadership of this Chamber. And as the leaders of both parties that sit on this Committee, we really will look and hope that we get and will have the opportunity to work with you to provide the leadership to address the problems of the UC system.

Again, if it requires legislative initiatives, if it requires Constitutional initiatives, and if it requires propositions, we in the State of California cannot tolerate the situation any longer.

We in the Hispanic community have no choice; right? We've got no choice. We have absolutely not a damn choice. We have, up to now, not even a damn word in the choice.

But I think California, certainly as a whole, cannot tolerate this situation any longer. It must be corrected immediately, and unfortunately, the appointment of Mr. Burgener, who joins many others like himself -- distinguished gentlemen -- on the UC Regents, is simply not the step that needs to be taken to begin that process.

So, it's difficult for us to make some of the statements because we don't want people to feel as though our comments are partisan. They're not. And they are not aimed at a personal indictment of Mr. Burgener as well, but they are very much the positions of the G.I. Forum, and they are, in fact, the concerns and frustrations of many people in the Hispanic community.

So, we really appreciate the opportunity and the fairness that you accord us, and hope that we will be able to work with you to address the institutional difficulties at a latter time.

Thank you very much, Mr. Chairman.

CHAIRMAN ROBERTI: Thank you very much, Mr. Torres.

Are there any questions?

Let me just point out that we share your concern. The appointing power right now is in the hands of the Governor. In other areas, we have indicated to the Governor that we would like his appointments to reflect the diversity of the State. He has done that somewhat since we've made our comments.

But we also, besides thinking in terms of the general makeup of the Board of Regents, pass on each person individually, too, which puts us in a difficult position. Maybe Mr. Burgener has the advantage that we know him, but in knowing, we do know he has an ability to work hard and work fairly.

Are there any other witnesses? Please come forward.

MR. VEGA: My name is Eric Vega. I'm the State Police Advocate for the Mexican American Legal Defense and Educational Fund.

Historically, MALDEF has been involved in a number of education issues, including higher education. We participated and testified at the Master Plan hearings.

One of the -- the bipartisan Master Plan report indicated, and a strong theme in that report was the need for diversity in higher education, and acknowledging things like: over 50 percent of the K-12 population right now is minority, what's called minority people, and that it's critical that this population gets a higher education.

So, it's imperative that we look at the UC system. And as Arnold was pointing out, I mean, there is a demographic explosion that is taking place in the State of California. My people are everywhere, and yet, everywhere they are under-represented. And we need to try to fix that in some way.

I wanted to cite a couple of examples at the UC level that we are particularly concerned about. None of the top 100 University managers is Hispanic. No Hispanics are at the Associate, Vice Chancellor or Chancellor level, and none at the

Associate level or Vice President level. No Hispanic women in the entire Executive Management Program, zero out of 336. The total number of Hispanics in the Executive Management Program has declined by 27 percent since Mr. Gardner became President.

CHAIRMAN ROBERTI: What is the Executive Management Program?

MR. VEGA: Pardon?

CHAIRMAN ROBERTI: Please refresh us on what the Executive Management Program is.

MR. VEGA: I have a report in here that goes into some detail. I wouldn't know how to real precisely give you the answer on that.

That's 8 out of 336 executive positions. Only one of the 52 executive positions reporting directly to the President is filled by a Hispanic.

A couple of days ago, there were a number of Third World students here at the Capitol, lobbying and making their concerns known about higher education, under-representation. Attached to the -- to this thing is a little fact sheet. One of them is very interesting. It shows that the 1988 Chicano kindergarten enrollment is about 131,000 students. And yet, if we follow the trend, approximately 682 will graduate from the UC system. In other words, only about one percent. Those are startling statistics. Those are things that need to be taken care of. They simply are not acceptable.

So what is to be done? One of the things that we want to do is try to sensitize leaders to begin to put their foot

forward and do something; start making some noise. I'm here to testify that I've had a couple of meetings with Mr. Burgener. He seems like a reasonable man. He seems willing to listen and to try to make some noise at the Regents level about the under-representation of Hispanics.

I am mindful that some of my brother advocates oppose this confirmation. They have made points I think are noteworthy and deserve attention. Indeed, I would recommend that Mr. Burgener address some of those points.

On the other hand, MALDEF is here today not to oppose his nomination. We've had good meetings with him. The Chinese people have a saying: Acts and not words are the criteria by which to judge things. And so, we're going to be looking to Mr. Burgener to act upon some of our concerns and to meet with us again and again, with the Hispanic community, to look at these issues and try to solve them.

I would, in ending, simply ask that you encourage Mr. Burgener to do that kind of thing, and that you encourage other leaders, other people that will come before you, to do the same thing: to meet with the Hispanic community to talk over how do we solve this problem of under-representation.

Thank you.

CHAIRMAN ROBERTI: Thank you very much.

We'll wait for Mr. Burgener to put that in his conclusion, his response.

MR. AROS: Mr. Chairman and Members, I'm Rudy Aros, and I am in fact your appointee to the University of California

Hispanic Social Research and Policy Advisory Committee, which was developed out of SCR 43, a measure that was carried by Senator Presley two years ago, that was unanimously adopted by this Legislature, received unanimous support in both Houses.

What that Resolution did is very relevant to the proceedings here today, and I thought it would be appropriate to bring to your attention what has occurred in that period of time since the passage of the Resolution, which asked the University to do a study and to come back with a recommendation to the Legislature regarding the issues that were raised in SCR 43.

To refresh your recollection, SCR 43 was designed to:

> "... promote the development of a coordinated effort to seek funding, establish research priorities, and to develop mechanisms for the support and continuity of research, intellectual investigation into our domestic Latino population for the purposes of policy development."

In other words, what SCR 43 was asking the University to do was to focus its resources, to look at what it has available, and to see if there isn't some mechanism that could be developed within the University of California to better utilize those resources in helping policy makers, such as yourselves, such as this Legislature, address the issues that were raised previously.

The University set up this Advisory Committee, and I have to tell you that there were a number of problems that

resulted out of that. First of all, the Advisory Committee had fifteen members appointed from within the University, two of them were women. Two Latinas out of fifteen. There were any number of White males and any number of Latino males, but only two women; only two Latinas.

They refused to put a Latina on the Executive Committee until Senator Presley introduced another resolution specifically requiring the University to formulate the Advisory Committee along specific lines that would ensure that women representation would be allowed on the Advisory Committee's agenda.

The University responded to that by saying, "No, no, no. Don't do that. You will disturb the process. We'll go forward and put women on the Executive Committee." Which was the real working committee of the Advisory Committee.

The Advisory Committee only met three times in the period of the last year. The Executive Committee did the real bulk of the work.

What they did was, they took the two women who they had already appointed to the Advisory Committee and elevated them to the Executive Committee, thereby giving them twice the work than they might otherwise have had to do, and not increasing the number of women's representation on the Advisory Committee; stating that they were too far along in the process -- and this was in April or May of last year. The report wasn't finished until -- the first draft report wasn't finished until November of last year, but it was too early in April or May to put more women on -- to late in April and May to put more women on.

Then, they proceeded to act so arrogantly with respect to the concerns that these women were raising that one of them resigned, so they only had one woman on the Advisory Committee.

Further, as I mentioned before, the Advisory Committee only met three times. The first was the organizational committee meeting, where we talked about what we were going to do over the next year and got to know each other. The second one was a progress committee meeting, occurring in April of last year, at which we talked about the fact that they weren't going to be able to get the report done by July, which is what their initial effort was supposed to result in, and there was a necessity for a delay, which I came back and asked this Legislature to encourage them to take. Delay the progress of the report so that you can do a good job.

Well, they delayed it for a while beyond September. They went into November, and finally had another Advisory Committee meeting in November. At that committee meeting, we were given -- I was given, two weeks before the Advisory Committee was supposed to occur, a draft, first draft of the proposal that was going to be submitted to President Gardner that was in response to SCR 43.

To tell you in very -- without being too derogatory, it was not very good. It didn't deal with what SCR 43 asked it to do. It didn't talk at all about how research priorities are set. It didn't talk at all about how the existing mechanisms within the University could be reoriented to accomplish the purpose that SCR 43 asked. It didn't do any of the things that SCR 43 asked it to do at all.

What it did was reiterate all the problems that you just heard capsulized a minute ago, telling us how they knew that this was a problem, and this was a problem, and that was a problem, and that was a problem, and what we needed to do about it was set up another advisory committee.

It didn't do what SCR 43 -- if they were a contract person who had been contracted to accomplish a particular purpose, they would have been fired. And I told them so in my response to their report, and said that I didn't think it responded at all to what the Legislature had intended in SCR 43, and it ought to be redone. And I was told that I didn't understand academic research priorities; that this was an academic thing, and they didn't appreciate interference from the Legislature; that they had their academic independence. Basically, they didn't want to hear from me.

And as a result of that meeting, there was some discussion about my comments regarding the report, and it was considered they would redraft it. It was redrafted. But there was never any effort on the part of the University to contact me, other than a meeting that I had with a representative from the President's office a couple of weeks after my letter went to them to talk about what my concerns were. We never had an opportunity after that to talk about what the final draft would look like, or the subsequent or the second draft would look like.

I received last Saturday the final draft. Not in draft form, but the draft -- the proposal that was submitted to the President of the University that will ultimately be submitted to

you. In other words, the Advisory Committee to which you appointed me did not have an opportunity to give advice. I was specifically excluded from participating with the Executive Committee, who I told you before was the primary motivating factor in terms of getting the report done. I was told that our presence -- the legislative and the Governor's appointees to the Advisory Committee -- was not welcomed on the Executive Committee's deliberations.

And basically the bottom line here is that I think the University was not fully accepting of the responsibility that SCR 43 asked them to accomplish.

And I think that this has nothing to do with Clair Burgener, but it has a great deal to do with the responsibility of the Regents. It is something that the Regents and the President of the University must ultimately take responsibility for. They are the ones who will ultimately, supposedly, direct what the University does and what the priorities of the University ought to be.

I think it's important at this point in time for me to bring this to your attention. And it would, I think, be valuable to hear from Mr. Burgener with regard to his concerns, and how he responds to the issues that were raised here today, and with respect to this one in particular, where the Legislature -- you, yourselves -- directed the University to give you -- to encourage them to give you a vehicle that you can use to solve these problems, and they've refused to do it, basically.

They have come back with a report. I haven't had time to do a real serious analysis of it because I only got it on Saturday. But it is virtually the same report that we had before, except for one thing: it has all references to a program that was essentially the program through which they had, I think, determined that anything that would happen out of SCR 43 would get accomplished, and that is UC-MEXUS, was deleted, because I raised the issue with respect to what UC-MEXUS' mission was, which is University of California and University of Mexico interrelationships, which is good, and I have no objection to it, except it's not what SCR 43 is all about. It's talking about here, in this country, in this state, focusing on the concerns and the problems that the Latino community in California has to deal with.

So, I bring this to your attention at this time, hopefully not taking too much of Mr. Burgener's time, but I think it's important for him to give you a little bit of a perspective on where he's coming from, and for you to be brought up to date on where the University is. And in my estimation, they are not where you would like them to be.

Thank you.

CHAIRMAN ROBERTI: Thank you very much.

Are there any questions? Thank you very much.

Next witness.

MR. ORTA: Mr. Chairman, Senator Mello, and Senator Petris, my name is Jesse Orta, O-r-t-a. I've been directed here to represent the interests of the American-Mexican War Mothers Association and LULAC statewide.

They've asked me to appear before you to present their opposition to the confirmation of Mr. Clair Burgener to this position with the UC Regents.

They are tired as business as usual and are looking, at this point, for leadership to make things happen. They see the UC Regents position as one that has too much of an influence over our future.

I'd like to review several points which these organizations believe are indicative and descriptive of perhaps some of the problems that we may be facing if we do continue with the confirmation.

First of all, we have the issue that he has served as the Chairman of the State Personnel Board. The organizations which I represent today have been very mindful of the fact -- just to bring one case out of several -- we have the case of one senior Hispanic manager who was demoted, went through the system which is established for the state, charging politically motivated demotions. After a significant study, and research, and hearings by the senior administrative law judge, the recommendation was made, after none of the charges were refuted by the state. The administrative law judge determined that, yes, the demotion had been specifically politically motivated and directed the reinstatement.

This reinstatement or recommendation from the administrative law judge was opposed by Mr. Burgener.

The issue of the State Personnel Board hearing, with the unfortunate comments in Fresno, is now well known. It's

certainly indelibly etched in the memories of many of our organizations. We are aware that Mr. Burgener has expressed his apologies for these misstatements. Many of our organizations believe that they betray a predisposition which is not in the best interests not only of the Hispanic community, but of the minority community in California.

As a steward of the State Personnel Board, the State Personnel Board is charged with the responsibility of pursuing the complaints, or even allegations and charges, of many types of wrongdoing, especially discrimination in the state system.

During this period of time, we have seen the State Personnel Board reduced in number, some would say decimated, and the profile of minorities in state service, specifically Hispanics, is still woefully behind the parity requirements which were imposed even by the State Legislature.

We believe that the University of California system is the key to our future in California, and that is a future not only of the Hispanic community, not only of the minority community, which is also quickly growing, but of the community at large in California, beset by significant problems. Problems which do require initiative and dynamic leadership. We've just heard that many of the efforts to try and address these problems, unfortunately, are perhaps outnumbered in the system.

We want some solutions. These organizations know that it's too easy to derail progress. We need someone who can handle many problems and many obstacles and will lead by example in order to make things happen for California's future, for this is our future.

Those conclude my comments, Mr. Chairman.

CHAIRMAN ROBERTI: Thank you.

Are there any questions?

MR. ORTA: Thank you.

CHAIRMAN ROBERTI: We appreciate your testimony.

Is there another witness?

Then we'll ask you to, hopefully, respond to some of the concerns that have been indicated by the witnesses.

MR. BURGENER: Mr. Chairman, I'd be very happy to.

I believe that the witnesses have some very legitimate concerns. They have some worries about me personally. I don't think those are paramount, but they're important, particularly the last witness.

And I consider Mr. Torres, Mr. Vega, and Mr. Aros friends. And while I don't know Mr. Orta, I hope that some day we'll be friends, and I mean that.

I can understand why they would prefer a champion, someone who would make theirs the primary cause.

I'd like to tell you what I did promise them and what I did not promise them. I've met with them a number of times, and it's my intention to continue meeting, and to see if we can't help improve what they consider as serious grievances.

Now, I told them that I would not become a one-person truth squad or a champion, because it is not my nature. But more important than that, I don't think that I could be effective. I told them that I would work within the system.

Now, what does that mean?

And by the way, I'd like to touch in a moment about our record on the Personnel Board, because it is good; it is a good record, and currently it is under serious challenge, a budget challenge.

But I said what I will do is apply for, on the Board of Regents, committee assignment to the subcommittee or special committee on affirmative action. That was some months ago. I did that. There were no vacancies at the time, but about two weeks ago, a vacancy occurred. The Chairman stepped aside so that I could be appointed to the Affirmative Action Subcommittee.

Now, it isn't enough to just get appointed to the subcommittee. You've got to work at the job, and I intend to do that. I told these people that I felt that if I couldn't convince my colleagues on the Board of Regents, particularly the subcommittee, of the grievances and the need for change, that I certainly couldn't do it on my own. That's my belief. That's my feeling. That's how I intend to work. And I intend to meet with these people as often as they wish, and we'll certainly do that.

Now, the Personnel Board, and I have been President for that last 2½ years, in that period of time, the Hispanic employment has increased from 13 percent, or 15,900, to 14.2, or 20,100 Hispanics. The hiring rate has gone from 13.4 to 17.3; good, but not good enough. And particularly when you consider that many of the jobs are at the lower level. We need jobs at the top level. We need management and decision making jobs.

Now, in partial defense of the Regents, let me give you some figures that I've been given by them. In each of the past

10 years at the undergraduate level, the proportion of entering undergraduates in the Black, Hispanic, and American Indian populations, has grown by 1 percent a year for the past 10 years. It's gone from a dismal 9 percent to a better, but not satisfactory, 19 percent. That's good, but it's not good enough because we still don't have enough on the faculty. We don't have enough in graduate school. We don't have enough in administration, and we don't have the top decision level making jobs.

So, I recognize that that is a fact of life. It is not fair, and I want to help change it. And I mean that most sincerely.

I'm very sorry about the Bill Garcia case. It was a very unfortunate thing. Mr. Garcia was a top level civil servant. He was awarded a CEA position, Career Executive Assignment, from which one may be dismissed without cause, provided it's not political or racial. And when that happens, you return to the civil service with your full rights, which is fair, and get your job back. You don't jeopardize your career.

What happened in this case the witness portrayed accurately. The Department, for whatever reason, discharged Mr. Garcia and put him back into civil service. The administrative law judge disagreed. We read the case, and we couldn't come to a conclusion, so we had our own hearing. The Personnel Board had its own hearing. At the end of that hearing, by a 3-1 vote, we voted to overrule the administrative law judge and to sustain the Department.

We may have been wrong; we may have been right. That was our judgment. We probably agree with the administrative law judges 90-95 percent of the time. If we did not occasionally differ, there'd be no need for us to be an appeals board.

Mr. Garcia still has the remedies of the court. As a matter of fact, he sued me for $32 million, personally, which was flattering, but also annoying.

CHAIRMAN ROBERTI: I was sued for a million dollars not so long ago, and I was annoyed by that.

MR. BURGENER: Well, the suit was dismissed in the federal court, because we are a quasi-judicial body. And if you can sue judges successfully for decisions they make, you couldn't get anybody to serve.

But I felt badly about it. No one feels good about situations like that, but we did what we thought was right.

Let me mention the Fresno incident, where I'm accused of anti-Hispanic remarks. I have never made an anti-Hispanic remark, but I sure made one that sounded like one, and I didn't mean to. I'll tell you what happened, since it's been brought up.

We've held several hearings all over the state on Hispanic outreach. We really have a good track record, perhaps faster than some Anglos would like, but still not fast enough. And I was introducing the witnesses. The audience was primarily Hispanic, and they were leadership people in state service. And they were reporting how well or how badly their department was doing.

I introduced one gentleman by the wrong name. I thought it was his boss. And he said, "No, no. I'm Mr. So-and-so." And I said, "Oh, well, you look just like him," or, "You look alike."

I did not mean that I think all Hispanics look alike. And that was my indiscretion.

I heard a murmur from the audience, and I didn't know what I had said. A note came up to me and said, "You'd better apologize." I said, "For what?" And they said, "You've indicated that you think Hispanics all look alike."

I did apologize, indeed. That was not what I meant. It's something I say to Anglos. It's something I don't say any more, I assure you, because it's easily misunderstood. But I did indeed -- I do not make racial references.

But the issue before you, unfortunately, I'm the only choice at the moment, as the Chair quite properly pointed out. But I don't think I'm a bad choice.

And I pledge and promise to work for fairness, and equity, and a better shake for not only Hispanics, but every protected class: women, Asians, Blacks, disabled, and anybody that isn't getting a fair shake.

CHAIRMAN ROBERTI: Thank you very much.

I appreciate the concerns that have been evidenced by --

MR. BURGENER: Oh, excuse me, Mr. Chairman.

I do have a file of letters of Hispanic support. I won't bore you with them. The La Raza Statewide Lawyers' Association are endorsing my candidacy.

CHAIRMAN ROBERTI: Very good, and I think we have a listing of them in our --

MR. BURGENER: I just wanted to point that out.

CHAIRMAN ROBERTI: -- in our file. I think that was important for you.

MR. BURGENER: But I want to earn the support of the others.

CHAIRMAN ROBERTI: Having served with you in the State Senate, I think you have an outstanding record of concern for everybody and for fairness.

Based on that, I intend to vote aye, and that doesn't mean that I'm discounting the concerns of the people who have testified here, some in neutrality, some in opposition. But I think those are concerns that your record indicates you would address.

Senator Petris.

SENATOR PETRIS: I was going to ask some questions. I think you've answered them, probably because of the talk we had the other day.

I need to underscore the legitimacy of the complaints against the system. Last year I carried legislation that started to apply to the University and Cal State, and I realized you couldn't order the University to do anything; we just ask. So, it remained as a Cal State bill. Their record isn't very good, either.

It's disappointing when you see prominent persons being appointed from within the system, a few from without, and they

really don't move on the problem. The figures you showed are impressive, the jump from 9 to 19. But when you're on the other side of the table, and you've been working at it for so many years, and you look around and you don't see very ample evidence, that 19 percent just kind of gets absorbed in the total. It's very discouraging.

We don't have much of a monitoring effort here from the Legislature. Our only chance to get at the problem is when another appointee comes before us, and we really have to get some public knowledge and commitment as to what that individual's going to do before we vote on confirmation.

It was so bad with the Cal State system that Senator Roberti sent word to the Governor that he personally was not going to recommend confirming any further appointments to the Board of Trustees of the State University system until a Hispanic was appointed. Well, the Governor did that.

It shouldn't be necessary for us to do that. We get these noble-sounding declarations in the form of speeches on the Floor, and resolutions, and public assurances, but when you get down to the nitty-gritty, you come up with some pretty grim statistics that were recited by the very first witness.

I mean, that is very discouraging in a number of ways. One is to the people who are pushing for some improvement, and the other is to the younger generation, who are being encouraged now more than ever before to seek higher education and go on to improve themselves in public or private sector careers. They, too, are discouraged when they see that. And some of that has

come in their experience directly as students. I've had students come to me because they know about my concerns statewide. I've had students come to me who are fighting for better representation even in the clerical field. It isn't limited to the top administrative jobs or professors with tenure. They're concerned about the entire structure.

I feel, from what you told me personally in our conversation, and the statements you've made here, that you're really going to make a good effort. Now, you may not be the lone crusader. There are others on that Board that can be helpful, however, that are inclined. I would urge you to keep reminding them.

I know you get in these Regents meetings, and you've got all kinds of issues, but since you're a member of the subcommittee, I commend you for seeking it out and now serving on it. I think it demonstrates your intention to really do something about it. It is one of the reasons why several of the Hispanic organizations are supporting your confirmation.

So, I don't have any questions, actually, because I think you've answered them.

MR. BURGENER: I appreciate that, Senator, very much.

Only time will tell if I can product, but I guarantee I'll try.

CHAIRMAN ROBERTI: Thank you very much.

Senator Petris moves that the confirmation of Clair Burgener be recommended to the Floor, do pass.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly. Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven. Senator Roberti.

CHAIRMAN ROBERTI: Aye.

Senator Petris moves a call. Such will be the order.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:50 P.M. The call was later lifted on the confirmation; Senators Beverly and Mello voted affirmative. The final vote on the confirmation was 4-0; confirmation was recommended to the Floor, do pass.)

--oo0oo--

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I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

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IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of April, 1989.

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NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JOHN M. TSAO, M.D., Member
Board of Medical Quality Assurance
Division of Allied Health

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P R O C E E D I N G S

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SENATOR CRAVEN: Item Three, Governor's Appointee appearing today. This is Dr. Tsao, member of the Board of Medical Quality Assurance, Division of Allied Health.

Thank you, Doctor, for being with us today. We will ask you, as the President Pro Tem. generally asks all those Appointees, to tell us why you feel that you are appropriate for the position to which you have been nominated.

DR. TSAO: Well, I've been a practitioner for twenty years. I've participated not only at the local level but also at the regional and now at the State level.

I feel that my background of dealing with patients, dealing with hospitals and my colleagues has given me a certain amount of experience and familiarity with those things that I think are very important in trying to make sure that the public is well served as far as their health needs are concerned.

SENATOR CRAVEN: Doctor, are you a family practitioner?

DR. TSAO: No, I'm a specialist in endocrinology and metabolism.

SENATOR CRAVEN: Do any of you have any questions of the Doctor?

SENATOR MELLO: I'm referring to an editorial that appeared in the Sacramento Bee recently about the California Acupuncture Examination Committee, where a member -- I want to make sure I get this straight. I perhaps should read you the paragraph here.

Acupuncture is under your Medical Board; is that correct?

DR. TSAO: That's correct. We're monitoring their activities.

SENATOR MELLO: Recently there have been reports of extensive licensing fraud in the Acupuncture Examination Committee, one of the examining committees under the Division of Allied Health Professionals. One of the members of the committee, Chae Woo Lew, was arrested on January 20th, 1989, charged with accepting bribes of $1500-27,000 in return for divulging answers to the Acupuncture Licensing Exam. That's all contained in this editorial here.

Some 47 licensed acupuncturists who allegedly paid the bribes have been charged and the cases are being prosecuted by the L.A. County District Attorney. It appears that some $500,000 or more in bribes have been received.

This committee operates somewhat autonomously, but I think they're under the direct supervision of the Medical Quality Assurance Board.

DR. TSAO: Division of Allied Health.

SENATOR MELLO: Right.

And so, I know this is nothing that reflects on you, but I just wonder how this can happen within the whole scope of the operation of the Board of Medical Quality Assurance?

DR. TSAO: Well, I think I might start by saying that as a former president of the Allied Health, and being in that division for the past three years, you must understand that,

unfortunately, we don't have absolute capability to be able to impose our rules and regulations on many of the committees. They have their own rules and regulations which they make. We do monitor them, but very often we -- primarily we have no absolute, binding methodology to be able to dictate to them exactly what we would like them to do.

That's just the way the division is set up at the present time. Obviously, this is a major, major grievance, and we certainly are going to investigate it at our next meeting.

SENATOR MELLO: If it's one case or two here and there, that would seem hard to detect. But something that's this widespread, it would appear that somebody should trigger investigation by your Board or the district attorney, which I think in this case, the District Attorney of Los Angeles has taken action.

DR. TSAO: Absolutely. I think that we will certainly look at that and try to make sure that it doesn't happen again.

SENATOR MELLO: Do you think there's legislation needed to help strengthen this so the Board would have more authority to move in on --

DR. TSAO: I would greatly favor that. I think there's been tremendous discussion regarding the exact role of Allied Health, how its role has changed as far as the supervision and direction of some of the committees, which are now basically free-floating, make up their own rules. We do monitor them, but we don't have the final say-so in terms of what they can do.

SENATOR MELLO: I know Member of the Rules Committee would be happy to hear any kind of recommendation. Maybe Mr. Ken Wagstaff could recommend some way in which we can reinforce the Board's ability to monitor these types of incidents before they get to the district attorney. I think once it gets to the point where a complaint is filed, then it's really a black eye on the whole medical providers; it looks bad on government.

Thank you very much.

CHAIRMAN ROBERTI: Any other questions?

Is there any opposition in the audience?

Do I hear a motion?

SENATOR CRAVEN: Yes, Mr. Chairman. I would like to move Dr. Tsao's nomination to the Floor.

CHAIRMAN ROBERTI: Senator Craven moves Dr. Tsao's nomination be recommended to the Floor.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to zero; the nomination is recommended to the Floor.

Congratulations, Doctor.

DR. TSAO: Thank you.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:35 P.M.)

--oo0oo--

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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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PROCEEDINGS

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CHAIRMAN ROBERTI: I will take up those people who have come here from out of town to address the appointment of Dr. Rider, and anyone else who cannot come next week. However, I think there is enough interest in this appointment that if we heard everybody this week, we wouldn't be able to get to much of anything else.

What I want to do is take up those people who would be inconvenienced to come back on Dr. Rider's appointment, and next week we can devote that primarily to that appointment. I hope that it would be satisfactory to everyone, which means therefore, that Dr. Rider's appointment will take two weeks. We will try to control our schedule for next week so that that is the primary matter that we will deal with.

It's just that in the last week, unexpectedly, in arranging the calendar, we've had more interest in that appointment than I had anticipated.

Is that all right with you, Senator Petris?

SENATOR PETRIS: Yes.

CHAIRMAN ROBERTI: Senator Craven, I indicated that I would like to take up, after we do reference of bills and the various items that Senators have and want us to take up, that we will hear the people who are in favor or opposed to Dr. Rider's appointment who would be inconvenienced and they couldn't come next week, and then have next week's meeting primarily dealing with the Rider appointment.

It's more controversial than I had anticipated when we put this agenda together.

SENATOR CRAVEN: Yes, sir. Whatever suits your purpose.

CHAIRMAN ROBERTI: Very good.

Then what we will do is, we'll take up reference of bills.

(Thereupon upon the Committee dealt with legislative agenda items.)

CHAIRMAN ROBERTI: The next item is Senator Jim Ellis' appointment as a Member of the Agricultural Labor Relations Board.

We'll ask you why you feel you're qualified to assume this position, to let you know that we're treating you the same.

Senator Ellis, we all know you, I think.

Does anybody have any questions? Is there any opposition in the audience?

SENATOR MELLO: Move the nomination be recommended to the Floor.

CHAIRMAN ROBERTI: Senator Mello moves that the appointment be recommended to the Floor.

I don't necessarily agree all the time with Senator Ellis on policy, but we know him to be fair.

MR. ELLIS: Thank you.

CHAIRMAN ROBERTI: Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to nothing.

MR. ELLIS: Thank you, Mr. Chairman.

CHAIRMAN ROBERTI: Confirmation is recommended to the Floor.

(Thereupon the Committee dealt with legislative agenda items.)

CHAIRMAN ROBERTI: Next is the appointment of Mr. Richard L. Camilli, Member of the Public Employment Relations Board.

Mr. Camilli, we'll ask you what we ask all the Governor's appointees, and that is why you feel you're qualified to assume this position.

MR. CAMILLI: Thank you, Mr. President, Members of the panel.

I appreciate this opportunity to present my qualifications. As you've probably noticed from the file, I've had over 30 years of experience in State government. Approximately half of that has been in various stages of the personnel field. There's been technical work in personnel management, and I've served as an analyst, supervisor, personnel

program manager, and a consultant to local agencies on various personnel items in other assignments. It's given me an appreciation of the fact that there are other systems and problems at all levels of government that need to be resolved.

I think these experiences will help me perform and carry out the legislative intent of the three acts for which we're responsible; namely, to foster and improve effective personnel relations in local government as well as State government.

CHAIRMAN ROBERTI: Thank you very much, Mr. Camilli.

Is there any opposition in the audience to the appointment?

SENATOR CRAVEN: Move Mr. Camilli's nomination to the Floor.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Camilli's appointment be recommended to the Floor.

No questions, Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to zero; confirmation is recommended to the Floor. Thank you very much.

The next appointment is John J. Maher, Executive Director of the Century Freeway Housing Project.

MR. MAHER: Good afternoon, Mr. Chairman; good afternoon, Senators.

I'm John Maher. I don't have a prepared statement, but I'll be happy to answer any questions.

CHAIRMAN ROBERTI: Can you tell us a little bit about your background in this area?

MR. MAHER: Yes, Senator.

I spent 30 years working for the State of California at both local levels, with the Department of Transportation as an Assistant Chief of the Division of Right-of-way for the State with statewide responsibilities. I also have been involved with the consent decree which governs the Housing Program at Century Freeway. I've been involved with that on and off since its inception.

I also was on loan from the Department of Transportation to the Housing and Community Development Agency for a period of three years, in which I had the role of the Director of Operations for the Century Freeway Housing Program itself.

Basically, I've been in various forms of real estate in the right-of-way classification, and know all the parties to the consent decree. I've been involved in deep discussions with the federal government over many years, which is the agency which produces 92 percent of the funding for the program. So, I'm

probably as familiar with the Housing Program as anyone that I know.

CHAIRMAN ROBERTI: Any questions?

Our data indicates to us that you've had a high component of minority participation in the construction contracts. There's been some concern that many of these minority contractors, however, and women contractors have experienced great insolvency problems.

Are you trying to pursue any way of alleviating that?

MR. MAHER: Yes, Mr. Chairman.

The program has been a very difficult one in that its funded out of the Federal Interstate Trust Fund for highway purposes, and with 8 percent of the funding coming from the Department of Transportation.

Trying to run a housing program with those funds has been a very difficult task. The process is that those agencies have prior review of every expenditure of every dollar that's made. And we have been required in the past to go on a firm, fixed-price contract basis, which basically has not allowed for some of the teaching, really, that has to go on with the employment of people who have not been in the field before.

We are doing a new program which we call a Notice of Funding Availability, in which we will have a lot more control at the State -- at HCD level, and we're hope that that will cause us to be able to much more successful in dealing with the minorities and women components of the program.

CHAIRMAN ROBERTI: Thank you very much.

Any other questions? Do I hear a motion?

SENATOR CRAVEN: Move.

CHAIRMAN ROBERTI: Senator Craven moves that confirmation be recommended to the Floor.

Is there any opposition in the audience?

Seeing none, Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to zero; the appointment is recommended to the Floor.

Congratulations.

Governor's appointees subject to confirmation but not required to appear. They are: Ronald L. Charlesworth, Member of the Board of Pilot Commissioners of the Bays of San Francisco, San Pablo and Suisun; Ruth L. Hendrickson, Member of the Rehabilitation Appeals Board; John C. Klepper, Member of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun.

Any discussion or debate? Any opposition? Is there a motion?

SENATOR CRAVEN: Move.

CHAIRMAN ROBERTI: Senator Craven moves their confirmations be recommended to the Floor.

The Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to nothing; the confirmations are recommended to the Floor.

The next item is the appointment of J. Alfred Rider.

SENATOR CRAVEN: Mr. Chairman, I thought I had a grasp of what you had said earlier relative to the hearing as it relates to Dr. Rider.

Did you not say we will take some testimony today, and then put it over?

CHAIRMAN ROBERTI: Right, put it over until next week.

SENATOR CRAVEN: But if we do that, aren't we exceeding the time limit?

CHAIRMAN ROBERTI: No, the time limit is June 1st.

MS. MICHEL: Although there is a scheduling problem. Dr. Rider will be in Washington, D.C. next week, which would mean we would have to do it the week after.

Since that week is the week of the holiday, we would have to do that on the Floor on Thursday or Friday directly after Rules Committee meets.

CHAIRMAN ROBERTI: Next week?

MS. MICHEL: The following week.

CHAIRMAN ROBERTI: The following week would be the 24th.

Give it to me again. Next week is the 17th; he can't be here. So that means the next week we could do it would be the 24th.

We could do it then, and I'll make sure Dr. Rider, in case there's any problem, has at least two days where he can have access to the Floor votes.

MS. MICHEL: The following Thursday or Friday, because Monday is a holiday, so that both that Thursday and Friday we are in session after we would have that on the 24th, if you don't get finished today.

CHAIRMAN ROBERTI: Dr. Rider will not be here next Wednesday?

MS. MICHEL: Correct.

CHAIRMAN ROBERTI: Doctor, are you here?

MS. MICHEL: He's right here.

DR. RIDER: Senator Roberti, if I might, I do have a number of supporters here that are from out of town, but I think we can shorten up my presentation to 15 minutes.

CHAIRMAN ROBERTI: I'm sure you can. I don't know about the opposition, however.

How many people are here to testify in any direction? How many are here in support?

MS. MICHEL: All but three are in support, I believe.

CHAIRMAN ROBERTI: Then let's try it.

Please come forward, Doctor.

DR. RIDER: With your permission, Senator, to expedite things a little bit, I prepared a statement of mine which you can look at. It might expedite things a little bit.

I'm Dr. J. Alfred Rider, San Francisco.

CHAIRMAN ROBERTI: Yes, Doctor. Please tell us why you feel you're qualified to assume this position.

DR. RIDER: Well, I have a statement prepared, but I'm going to shorten this up and try and just pick up the salient features of it for you. I know you're under a constraint of time.

I would like to state that I've practiced medicine in San Francisco for some 36 years, specializing in internal medicine and gastroenterology. I've been President of the Children's Brain Disease Foundation for the past 20 years.

I've been extremely interested in helping the minorities and disadvantaged, not only to get into medical school, but to receive the additional training in order to become licensed. It is probable this interest began because of my mother, who was also a practicing physician in Riverside, Illinois. Not only did she face discrimination as a woman, but she was also of Polish

descent, which further accentuated this discrimination at that time.

In 1976, I helped draft legislation, AB 3064, with Assemblyman Michael Wornum, which allowed private hospitals not allied with university medical centers to provide postgraduate training for the disadvantaged and the foreign physician who are unable to get their training in the mainstream.

I've assisted and trained many foreign physicians from all over the world, and I know there are quite a few here in the audience who will testify to the training programs and how it's been of benefit to them.

I was first appointed to the California Board of Medical Examiners in '74, and served as the last secretary-treasurer of this Board and became the first secretary-treasurer of the new board, which was called the Board of Medical Quality Assurance. My present tenure began in 1984, when I was appointed by the Governor to serve on the Board of Medical Quality Assurance, Division of Licensing. I feel I have a very valuable background and expertise which is of benefit to the Board.

I've been instrumental in streamlining the Licensing Division's activities. During my tenure, better guidelines have been developed in regard to licensure. I was active in having our Board sponsor legislation that would allow postgraduate education, not only for American students, but also foreign students to be considered in the overall licensing application. Thus, this training can now be used to make up for deficiencies in their undergraduate training, if they should exist, AB 782, Tucker.

I've also instigated a concept that the first year of postgraduate training must include at least four months of general medicine in order to protect the public, AB 783, Tucker. I've supported the concept and am working hard to require that everyone take one universal examination for licensure, regardless of whether they are American or foreign graduates.

I know there've been some issues raised, including charges of prejudice with respect to my roll in rejecting a group of Vietnamese doctors who apparently graduated from the University of Saigon after 1975. Since there's litigation pending on this matter, I've been advised by attorneys that I'm not to discuss this in public forum.

I'd like to point out, however, that over 400 Vietnamese physicians had already been licensed in the State of California. Further, I'd like to state for the record that I was only one member of the Licensing Division. No member controls the decisions of the Division.

No actions taken were done without legal advice with respect to what we were allowed or not allowed to do. Based on the law at that time, the staff, including the program manager, recommended against approval for licensure in the group of Vietnamese physicians who had graduated after '75, but could not provide satisfactory documentation regarding their training. Nevertheless, as one of the members of the Licensing Division, I constantly tried to find ways within the law that they could be licensed.

I might add that this whole issue began before I was appointed to the Division of Licensing.

The law has since changed and allows for a Faculty Council in Exile to, in effect, approve these applicants. When this law took effect, I immediately acted to instigate the process in which the Licensing Division would appoint this committee, and recommended a Division of Licensing member who would serve on this committee.

For the record, I'd like to state that during the consideration of the Vietnamese physicians, there's never been one iota of prejudice on my part or on the part of any member of the Division of Licensing or staff. This also applies to all other candidates regardless of their country of origin.

Throughout my tenure, I have tried to be compassionate as well as objective to those who apply for licensure. I've made myself available to anyone who has problems getting a license. In those cases where I felt that an injustice was done, I've asked for a review of the applications, and I have urged these applicants to apply to the Credentials Committee of the Division of Licensing for a specific review or hearing. I've tried to give people advice as to how best to make up various deficiencies, if in fact they did exist, bearing in mind that our first duty is to protect the consumer in the State of California.

I've traveled extensively to visit various medical schools throughout South America, England, Canada, Europe, Chine, the United States, and visited numerous hospitals to better understand global medical training.

Contrary to rumors and a report in the newspaper, I've never engaged in any shouting matches or made any threats to anyone regarding any applicant, and certainly not with respect to a Dr. Scott Bradley. When the decision meeting was made concerning this candidate, I not only abstained, but I excused myself and walked out of the room. I was never forced to do this. I did this because I felt there could be a conflict of interest. I was not privy then, nor have been told subsequently, of any discussion. I was informed later he had been approved.

I would like to state that I was and am the Director of PGY1 Program at the Ralph D. Davies Medical Center in San Francisco. This position is purely voluntary. I receive no compensation whatsoever.

Furthermore, with respect to Dr. Bradley and other trainees, many of whom are in the audience, I've never received any compensation directly or indirectly from them, nor have I received any other benefits.

In our capacities as members of the Division of Licensing, we have gotten many calls from Legislators, physicians and other board members to look into various cases where there's a perception that a deserving physician is not being given a license. At no time have I nor have I seen any of our Division members make anything but a fair and impartial decision once the true facts are known.

With respect to Dr. Bradley, who's become famous in the newspaper, I'm happy to tell you that he's practicing as a general practitioner, the only full-time M.D. in the town of

Groveland in Tuolumne County in California. He's just the kind of physician we've been trying to develop and encourage to go to a small community and rural area where he's really needed. You might be interested to know that Medicare has determined that Groveland is a federally designated "Health Manpower Shortage Area."

In summary, I'd like to respectfully ask this Committee to reconfirm my appointment to the Division of Licensing. I feel that because I have a background with the Board going back to '74, I have a historical perspective that's invaluable.

I feel I have always acted properly and not broken any laws or regulations, and I've acted with compassion. I certainly have never been prejudiced against any foreign graduates, regardless of country or origin, nationality or sex. I've tried to be innovative in an attempt to assist medical graduates, especially those from foreign schools, who may have problems obtaining their licenses, bearing in mind that my first duty is to the consumer of the State of California.

I have encouraged and sponsored legislation to make the licensing process more streamlined, more uniform, and give authority to the Board to grant licenses to deserving individuals who, for one reason or another, may have difficulty in obtaining documentation of every minutiae of their training.

Thank you very much. That's my statement. If you'd like to hear the opposition, it would be all right. If I had five minutes at the end, I'd put on -- I'd let the people --

CHAIRMAN ROBERTI: That may be the way to go, if you don't mind. We'd hear from the opposition first, and then let you have your witnesses as a rebuttal.

DR. RIDER: Sure. We can streamline it.

CHAIRMAN ROBERTI: Fine, thank you, Doctor.

Is there opposition in the audience? Please come forward.

MR. ZELMAN: My name is Walter Zelman, and I'd like, to some extent, beg the Committee's indulgence. I wish to testify in a private capacity, not representing the organization that I am known to work for.

And I feel compelled to testify due to a lot of personal knowledge in this area, having gone through a rather extenuous [sic] experience with the Board of Medical Quality Assurance during Mr. Rider's tenure.

I want to emphasize, I do not know Mr. Rider. I have no personal contact with him, and my purpose here today is to try to get you to, at some point, look at the larger question involved with the Board of Medical Quality Assurance, which in my view, or at least in the period I am familiar with -- which is about 1983 to 1987 -- was regularly abusing graduates of foreign medical schools, exhibiting a bias against those graduates, a readiness to discriminate against them, a disregard of much State law and legislative intent, and a willingness to enforce laws and regulations in an arbitrary and inconsistent fashion.

They also showed a willingness and a preparedness to impose virtually any bureaucratic hurdle they could find to prevent the licensure of foreign medical graduates.

They have the right to look at foreign medical graduates closely, and they should; to investigate foreign medical schools, and they should.

In my view, they have no right to abuse their powers nor to reinterpret or redefine the laws of the State of California.

At very best, the Board seems like an agency that was grossly over zealous in a self-annointed mission to prevent foreign medical graduates from obtaining licensure in California.

At worst, it has become another example of the worst of licensing boards; namely, an agency that was set up to become the servant of those it was supposed to regulate.

What I would like to do is look briefly at one case, and I'd like to show you the history of that case of an individual, with whom I'm very well acquainted, who fortunately now has gotten through all this, so I feel free to talk about it. I was constrained for many years. But I'd like to show just some examples of this case of the kinds of things, and I suspect that there are others here that are testifying against Dr. Rider today, and they will document many of the same kinds of issues.

This is the case of an individual who ultimately got licensed, but after two and a half years of delay, and about $45,000 in legal expenditures and delay, and considerable abuse from the Board.

In April of 1983 -- I'll just go through this very quickly. It gives you a sense of the kinds of things this Board has been doing on a regular basis -- in April of 1983, this individual, a California who was a graduate of a foreign medical

school, received approval to take the licensing examination, which is the FLEX or the National Licensing Examination, to become a physician.

In May of 1983, when the Board began its crackdown on graduates of foreign medical schools, the Board decertified the school she had graduated from and revoked her right to take the examination.

A few months later, the Board instigated a whole new set of regulations, perhaps appropriately, in which they virtually said that we don't care what papers you have from your foreign medical school, you have to document on individualized affidavits from virtually every physician who's trained you that you actually did all the work that your transcript or your diploma says you did. A very burdensome task, perhaps appropriate.

She went through all of that process, and in October of 1983, was again approved to take the licensing exam. In December of '83, she passed the licensing exam with a score which I'm told is about in the top ten percent nationwide.

In March of 1984, however, when she was about to get an internship to begin in July of '84, the Board demanded that she -- refused to give her a letter and demanded that she take over a pediatrics course. This resulted in the loss of her capacity to file for an internship that year, and as I understand it from my consultations with many of the people in this period, was typical of the way the Board delayed people. You get right to the brink, and then they go back and tell you that four years ago something was inadequate and you had to do it over.

In June of 1984, she completed that pediatrics course. In July of '85 --

CHAIRMAN ROBERTI: On what grounds did they say that she had to retake the pediatrics course?

MR. ZELMAN: Well, she had passed it at UCLA, and she had been given a failure somewhere else.

There wasn't -- she didn't necessarily object that they said she had to take it over. The problem was that they waited until the moment she was about to get licensed that she had to take it over. Had they told her that a year earlier or --

CHAIRMAN ROBERTI: I understand. That was based on a failure somewhere else?

MR. ZELMAN: Somewhere else, right, but she had passed the course at UCLA.

In June of 1984, she completed that class, and in July of '84, the Board gave her a letter saying she'd completed all the requirements and could be licensed in the State of California. She had to wait six months before she could find a school where she could get a residency, and she began that in Loma Linda in 1984, where she completed a year and Loma Linda sent the papers to the Board saying, "Licensure her. Give her the final oral exam," et cetera.

At that point, the application disappeared into a black hole. It took me literally six phone calls to find out where it was, to find it was in the Licensing Fraud Division of BMQA, where they commenced another investigation of her as a foreign medical graduate.

That investigation finally concluded in July of 1986, with the Board issuing a statement of issues denying her a license. That threw her out of her residency, and the Board charged her with about 15 different counts of fraud, misrepresentation, discrepancies, et cetera.

Briefly, let me give you a flavor of what those charges entailed. Some of them were petty, some of them were gross distortions of what State law was. For example, they charged her with inadequacy on her rotation she did at Scripps Clinic in La Jolla in allergy -- which is probably the premiere place to study allergy in the United States -- claiming that it was not clinical research in that she didn't deal with patients, and yet they had three letters from the supervising professor saying in fact that it was clinical research, the kind of research that UC San Diego students do, and there was never any explanation for the charge.

They charged her with --

CHAIRMAN ROBERTI: Had they ever criticized the UC San Diego students?

MR. ZELMAN: Not that I know of.

They didn't bother to call the professor, the doctor, and ask him. There were literally three or four different forms by this time that that doctor had signed on forms the Board had made out as to what the case was.

They charged her at one point with hiding the fact that she'd passed a psychiatric -- a course in psychiatry at Cedars Sinai at UCLA. In fact, the course was just listed in another section of the application, and yet the Board, rather than seeing

that or dropping the charges, they continued to charge her with fraud for hiding the fact that she'd passed psychiatry at Cedars Sinai.

CHAIRMAN ROBERTI: What difference --

MR. ZELMAN: Honestly, sir, I have no idea where these charges came from.

Literally, the record said list where you've taken the core courses. Since she had passed that course at two different hospitals, she listed one of them. They charged her with fraud for not listing the other one, when in fact the other one was listed on another part of the application.

This was not a course she failed. It was a course she passed at UCLA Cedars Sinai. They charged her with fraud because it wasn't listed as a second place she'd taken the same course.

They had five letters from one physician saying that they had -- that she had taken a course from him counting four weeks. On one he had made a mistake, saying it was three weeks. They charged her with fraud for claiming she'd taken a four-week rotation when in fact it was only three weeks. In fact, they had four letters saying it was four weeks, but this was another indication of fraud.

They charged her with inadequacy because some of the hospitals in California -- she did all these rotations at USC and UCLA, UC Irvine -- but they charged her with inadequacy because some of those hospitals had not sent the Board forms saying that she was working there. Did she know of the existence of these forms? No. Did the Board say there was anything wrong with her

rotations? No. Certain forms hadn't been filed, therefore inadequacy.

The real crux, though, came on the way the Board regularly and routinely violated State law in interpreting and destroying -- or trying to destroy the applications of foreign graduates. For example, the Board claimed that she could not get a license because she had not -- at the school, she had not been in attendance 80 percent of the time. State law says in order to get a license, you must have been in attendance at medical school.

Now, as you all probably know, there are hundreds of California physicians who went to Mexico, who did their first couple of years in Mexico, who then came back to the United States to study in American hospitals to do their clinical work. In fact, this Legislature passed legislation in 1976 encouraging them and enabling them to do that, figuring these Americans are going to come back and practice here anyway; let's at least make sure they get the best training. So these students were encouraged to come back.

And yet suddenly in '83, the Board began to define "attendance" as having been in residency at the school at which you were registered, a mechanism which, in effect, was a hurdle that no foreign graduate could meet because all of them tried to come back here to do their work. In fact, it meant that if you were a UCLA -- if you were studying at UCLA and you went to Harvard for your fourth year, you wouldn't meet the residency requirement because you have not been in attendance.

Well, of course, attendance doesn't mean at the school. It means -- attendance means in class. That's what the Legislature obviously intended, in class. It doesn't mean in a particular place where you registered to go to school. But they used that mechanism as a way of demoting and undermining all sorts of claims.

And lastly --

SENATOR PETRIS: Question.

MR. ZELMAN: Yes.

SENATOR PETRIS: Was this done by a formal regulation?

MR. ZELMAN: Not as far as I know. It was just --

SENATOR PETRIS: Administrative policy?

MR. ZELMAN: Just by dictum by the licensing chief at the time, Mr. Grimm. Now, maybe he was under orders. I don't know. I have read depositions from him in which he basically described this rule of attendance.

Clearly, as a matter of fact, the last straw in this whole case was when -- the one thing I tried to do -- I didn't do anything legislatively. I went to Gordon Duffy, who had authored the legislation, and got him to fill out a statement to the Board saying that the notion -- that it had been the Legislature's intent to encourage Americans studying abroad to come back here and do their clinical work. So clearly, it was not the Legislature's intent to define 80 percent attendance as 80 percent in Mexico.

Finally, the Board charged her with inadequacy because she did not have a diploma. Now, State law clearly says, in

every place where diploma is mentioned, that you need a diploma and a transcript and/or other evidence satisfactory to the Division. That goes way back in the law because foreign medical graduates often have problems with diplomas, and as I understand it, most of the Mexican students take Fifth Pathways here and never even get a diploma.

Nevertheless, they charged her with not having a diploma. Now, of course, in '83, when they had allowed her to take the licensing test, she didn't have a diploma. In '84, when they certified her again, she didn't have a diploma. When they let her begin her residency, she didn't have a diploma. Two years later, after a third investigation, when they knew the school was closed, suddenly they need a diploma; a diploma which all their regulations now show is worthless because basically they want personalized affidavits from every physician showing that you did all the work that might appear on the diploma.

The final straw of it is that, being thrown out of work, she went to the Dominican Republic, came back with a diploma issued by the Department of Education of the Dominican Republic. The Board questioned whether or not the Department of Education had the right to issue the diploma. She brought them the Dominican law saying it did have the right to issue the diploma. The Board questioned whether the Department of Education was a bona fide institution in the Dominican Republic. She brought them a letter from the State Department saying the United States State Department accepts these diplomas and accepts this as a bona fide entity of the Dominican government.

And as I understand it -- I don't know this for a fact -- but as I understand it, the Attorney General's Office then sent somebody to Washington to interview the State Department and make sure that all of this was true. All of this for a diploma that their regulations deemed to be worthless, from a school that they have decertified, for a State law that does not demand a diploma. All of this one has to go through.

The bottom line of all of this, fortunately, is that ten days before the administrative hearing, for which she waited nine months and spent $35,000 preparing, ten days before that, the Board virtually drops the case and allows her to become -- or almost. The staff and the Attorney General allow her [sic] to say, "Okay, we'll license you. All you have to agree to is to take a few extra hours of continuing medical education," which she agreed to do, to not sue them, which was terribly important, obviously, and to allow the Board to monitor her. They dropped all the charges of fraud, misrepresentation and discrepancy. None of those appear any longer.

The Board then -- we asked our attorney, who is Dick Turner. Many of you may know him. He's a very well known licensing board attorney. We asked him, "Does this do it?" And he said, "Well, I've never known of a board to overturn this kind of agreement signed by the Attorney General and the staff of the Licensing Division."

Sure enough, the stipulated agreement went to the Licensing Board. The Licensing Board came back saying we will only license her if she takes a psychiatric examination. My

thought was, well, go ahead and take the psychiatric examination -- I'll finish, Senator -- she refused to do it.

SENATOR PETRIS: Who demanded that?

MR. ZELMAN: I don't know who in the Licensing Board. It was the Board that demanded it.

SENATOR PETRIS: Was it by letter?

MR. ZELMAN: No. The Board demanded it. It was relayed back to us through our attorney.

And the only way she got licensed, she refused to take the psychiatric examination, refusing to allow that on her record, at which point the Attorney General -- and I've never seen this letter, but if you're interested, I'm sure maybe you can get it -- the Attorney General -- maybe it's attorney-client privileges -- the Attorney General apparently sent a letter to the Licensing Board in effect saying, "You cannot demand this. You must license her."

They then licensed her. She went on to finish her residency at Loma Linda. She completed that in December of last year. She's now in practice at Kaiser, and she has received what I understand to be a very prestigious fellowship to study pediatric pulmonology at Children's Hospital of Los Angeles, certainly one of the premiere hospitals in the country for children. She will be studying pediatric pulmonology.

The sum total of all this is, she lost about two and a half years, about $45,000 in legal and other fees, thousands of dollars in interest fees that piled up on student loans, and I can't begin to express the emotional distress that all this put one through.

This is not, I conclude, one case. There are many, many cases like this one that I have heard of that I've come across in the course of seeing this.

This Board, at least during this period, was clearly out of control, clearly abusing State law, clearly arbitrary and capricious in its behavior, at least toward foreign medical graduates.

CHAIRMAN ROBERTI: Thank you.

Senator Craven.

SENATOR CRAVEN: How many members are on BMQA?

MR. ZELMAN: I don't know. I don't know how many members are on the -- there are several different divisions of BMQA.

DR. RIDER: There are 19 members; 7 on the Licensing Division.

SENATOR CRAVEN: Seven members on the Licensing Division.

Do you attribute all of the travail that this person -- who have I great suspicion may well be your wife -- has undergone to Dr. Rider?

MR. ZELMAN: No. I don't know. I'm attributing it to the Board. Dr. Rider was Chairman of the Board.

SENATOR CRAVEN: Was he Chairman during all that period of time?

MR. ZELMAN: I believe he was Chairman for most of that time.

DR. RIDER: I was not.

MR. ZELMAN: My main purpose, Senator Craven, my main purpose here is, I am not opposing Dr. Rider. My main purpose here is to bring these facts to your attention. It's one of the first opportunities I have seen in about four years to get before a committee when it's past me, when I don't have to worry about being accused of anything, to raise this issue with some of you to say this Board has been out of control.

This Board deserves serious review. That's my main purpose here today.

SENATOR CRAVEN: Thank you.

CHAIRMAN ROBERTI: Thank you, Senator.

Any other questions?

Maybe we'll have you come back, Mr. Zelman, when we ask some of the others questions.

Frankly, it has been a concern of mine for sometime, too, the arbitrariness with which this Board and a couple of the others treat foreign graduates.

MR. ZELMAN: There is, Senator, a social and political element to it that nobody mentions.

There was a study done out of New York a few years ago called, "The Hidden Agenda," which was done by the New York State Legislature. The purpose of the study was basically to argue -- and I don't know that this is the case here. I'm not necessarily suggesting it is -- the purpose of the study was to argue that the real hidden agenda in the persecution of many foreign medical graduates was to restrain the growth in the number of physicians.

But one of the things that that study revealed was that the social cost of that was very steep in the sense that it's the foreign medical graduates who are unable to get the top jobs in California hospitals and private facilities. It's the foreign trained physicians who end up going into the inner cities, into the low-income areas, into the poor and rural areas of the state to practice. This is one of the few places they can get appointments, where they can get the best opportunity.

So, by cutting down dramatically on the foreign medical graduate admission process -- and I was told several years ago that California was, at the time at least, the single most difficult State for a foreign medical student to get licensed -- so in cutting down the numbers of physicians, there was no -- you know, you're hurting the access to poor people of physicians.

Nor have I ever seen -- and maybe they could present some today, but I asked once and never got an answer -- nor have I ever seen any evidence that graduates of foreign schools who got through the licensing process, took the test, the written test, passed it, got through a year of internship and got licensed, were in any way more prone to be charged with malpractice, more prone to be charged with -- by the Board with alcoholism or drugs, or any other kind of problems. As far as I know, there is no evidence to that effect.

So apparently, the licensing process does work if you get through it. You have to be somewhere. And there are hundreds and hundreds of practicing physicians in California trained in foreign hospitals of all kinds. And so far as I know, no evidence that they are in any way inferior.

CHAIRMAN ROBERTI: Senator Craven.

SENATOR CRAVEN: So much of what Mr. Zelman has said is, to a degree, familiar to me. I serve on the Business and Professions Committee, which is the receptacle committee for legislation involving so much of what you have said.

And I've heard about the schools in Mexico, and the Caribbean, and Vietnam, and other places for a long period of time. And so much of what you've said I've heard before because it's happened to other people. There is really no exclusivity as it relates necessarily to Dr. Zelman, although she may well have undergone a lot more traumatic experience because of certain things, which I can understand you would take offense at.

But the thing that kind of sparked my thought or comment was the comment you made relative to the study in New York. In my judgment, those people who act in our stead or on our behalf in BMQA, and those people who are allied, have not taken an action against foreign medical students on either a capricious or discriminatory basis, but one to ascertain the quality of instruction and the inherent knowledge which they have accumulated in order to serve side by side with physicians who have gone through a curriculum that we are cognizant of and that we approve wholeheartedly, because, with all due respect to Southeast Asia, what they may do in Saigon in a medical sense, or even Manila, may not be the same as what we experience in San Francisco. And we like to think of ourselves as the norm, and since it is we who are running things, then I guess we have every right to do so.

So, I have some sort of mixed emotion on some of the things, particularly that report which you've quoted, although you're not blaming us for that, and I appreciate that.

CHAIRMAN ROBERTI: I agree with you, Senator, with your observations.

What concerns me is not only the hurdles that they seem to be imposing in this case and, I think, in other cases, but in this case it's a frontal attack on the applicant -- misrepresentation, fraud -- things that will --

SENATOR CRAVEN: Mr. Chairman --

CHAIRMAN ROBERTI: -- jeopardize somebody's --

SENATOR CRAVEN: -- that is really not -- really, if you could go back over the committee hearings on this subject area, you'd find that's not unusual. You hear more people coming out of Mexico and having, you know, the trials of the damned to try to get themselves put into the system here in the United States.

Mr. Zelman talked about the Fifth Pathway. We have had discussions on that.

So much of this is repetitive as I listen to it. I'm not saying that I didn't enjoy hearing the testimony. I'm just saying that I've heard that type of testimony before.

So, as I said to Mr. Zelman, I don't think there's necessarily any exclusivity. Now, you may find in that a real problem by virtue of saying, well, if it happened to Mr. Zelman's interest, and it happened to other people, then there's obviously something wrong systemically.

But my point is, very simply, can you take all of the ills and ails of the milieu and attribute it to one individual, in this case Dr. Rider? My thought then, my answer to that would be, of course not.

MR. ZELMAN: Senator, I can only respond by saying this case is not unique. I think there are hundreds of people who have gone through this experience, most of whom are probably not in California any more. Most of whom probably went somewhere else to try to get a license.

And I can only suggest that the -- for example, the Senators review the record of the Business and Professions Committee, which did a long study of this subject several years ago, and if you think I was hard on BMQA, you should read that report in terms of what BMQA does.

And finally, again I would emphasize, they have every right. There is a foreign medical school issue. They have every right to investigate those schools. They have every right to investigate those individuals carefully, but they do not have the right to reinterpret State law. They do not have the right to throw up bureaucratic hurdles that are not appropriate. They do not have a right to abuse people, and there is a difference.

I think there are hundreds of people, as I say, most of whom are no longer here, who would back that up as well as the report issued by the Senate Professions Committee in December of 1984, if you'll read that.

I would suggest, you know, if there's any way it could be done, if some auditor were to look at BMQA and report to you

in an unbiased way the treatment of foreign medical graduates, it would be a shocking story.

The one case that I know of that finally did get before an administrative law judge -- because what traditionally happened in these cases was that just as the case -- as somebody finally worked their way through all the loopholes, the Board would settle. A year or so ago, or two years ago -- I'm sure someone else here will have the details on it -- one case did get before an administrative law judge on one of these foreign medical graduate cases. And the Board -- and the judge wrote an inflammatory opinion, outraged at what BMQA had done to this individual, deciding that that individual should be licensed. The Board rejected the application. I don't know where it went from there.

I'm saying there is a systemic problem. This is not a unique case.

I thank you for the opportunity to have presented this information.

CHAIRMAN ROBERTI: Thank you, Mr. Zelman.

Are there any other witnesses in opposition?

SENATOR PETRIS: Mr. Chairman.

CHAIRMAN ROBERTI: Senator Petris.

SENATOR PETRIS: I just want to tell Mr. Zelman that there are a lot of foreign medical school graduates who've been admitted and are practicing in California.

But, over the years, this pattern has existed long before BMQA. When I first came up here a hundred years ago, I

was asked by a foreign graduate who had come from abroad and had spent a year in some kind of internship in the Middle West and wanted to practice in California, they wouldn't even let him take the exam. They told him he had to go through medical school all over again, and absolutely refused to consider the credentials. I'm talking 25 years ago, maybe more. We never heard of BMQA in those days, but the attitude was there among some of the people at the staff level and some on the Board.

It's kind of gone in cycles. There are cycles where there's tremendous attention given, and then there are other cycles where they just -- you'd think they're working on a quota, or something. They bring down that iron gate, and you can't get through it no matter what.

I had to put in a special bill for one person, which passed, to solve that problem. It said if you're a graduate of a medical school that's accredited, and this and that, and recognized by the U.S. generally, and if you've had a year's internship, and if and if and if, you must be permitted to take the exam. It wasn't even a bill that said, hey, let him in. It said let him compete on the same footing as the rest.

There have been several bills since then. But then the Assembly a few years ago said we're not going to let any more of those bills through. And Gordon Duffy was chairman, as a matter of fact, because I had a similar problem and went back. They wouldn't entertain those kinds of bills any more.

So, you did emphasize you're not talking about this particular Board member. You're talking about a policy and an

attitude that, unfortunately, I can tell you has existed at least from time to time -- I'm not saying it's been continuous every year -- which has effectively excluded people, whether that's their intention or not.

CHAIRMAN ROBERTI: Please come forward.

DR. KIEU: Thank you, Senator.

Mr. Chairman, honorable Members of the Rules Committee, I'm Quynh Kieu, a physician, a pediatrician, and assistant clinical professor at the University of California in Irvine.

I'm testifying today in the capacity of Vice Chairwoman of the Vietnamese Refugee Physicians' Committee.

The facts I'm going to be relating to you are directly occurring during the period that Dr. Rider was chairing the Division of Licensing.

Back in 1985, in September, the Board decided to withhold any further licensing of Vietnamese physicians from before or after 1975. This was an effective moratorium; however, it was not until May of 1986, the following year, that the Board came forward -- the Division of Licensing came forward with the statement to the issue that they would stop the licensing and would be doing an investigation.

Our committee got involved at that point in order to research and find out what was the reasons and fundamentals for such drastic action.

The Vietnamese physicians came in bulk with the massive immigration from Vietnam in 1975 with the fall of our country to the Communists. Since 1965, the American Medical Association has

been extensively involved with our medical school and has had an active program of monitoring and upgrading and bringing the American system to our medical school. So therefore, the American Medical Association directly helped with the process by gathering a number of faculty members from our medical school in order to certify and deliver a certificate in lieu of diploma to the physicians who had effectively graduated before 1975. There were documentations that the AMA had been able to bring along, as well as other microfilms and other lists of graduates from each year they have been able to salvage.

So therefore, the process had been well established, and the Faculty Council in Exile had been certifying for ten years, since 1975 up to 1985, when the instance of the moratorium occurred.

When representing our organization, I went to the Division of Licensing to ask for the reason for such an action, whether there were any cases or any instances of fraud, or any other problems related with all the people who have been licensed subsequently to 1975, I have always been told that, no, there is no such a case, and the reason was that according to the staff from the Division of Licensing, there was a need to update the knowledge about the process, which is a well known and well accepted process which had been going on for ten years nationwide, and that no other state has sought to challenge.

However, after we were able to open some communication with the Division of Licensing, they went on completing an investigation which involved talking with the American Medical

Association and reviewing the process in its entirety. And in July of 1986, physicians who had graduated before 1975 were allowed to be licensed.

Remaining in the pipeline were 31 physicians who had graduated after 1975. Just to take one case as an example, I would take the case of one lady who is -- who was doing at the time a pediatric residency at the University of California in Irvine. She was in her second year of residency, and therefore had fulfilled all the requirements for licensing. She had obtained very honorable grades and had had very complimentary evaluations on all other instances from her supervisors.

The lady did take the oral examination and had even been sent a document through which -- which essentially said please send the licensing fee, and we will send you your license. This she effectively did; however, the license that we awaited never came.

Subsequently to the moratorium, her whole case was -- came back again in question. This resumed into a drastic hiatus for that young lady, who was allowed to -- who did finish her pediatric residency, had a job which was offered to her at Children's Hospital in Orange County, and therefore was never able to take it because of the fact that she did not obtain her license.

This is just an example of what the hardship which was imposed on those people who came so close to getting a license, did play by all the rules which were imposed on them, and yet, when they came close to the goal, were denied on the basis of new rules they had instituted.

Again, our committee had some discussions with the Division of Licensing, and there were interests into obtaining additional information about the quality of medical education in Vietnam after 1975, which we did. There were requests such as regarding what was the curriculum after 1975; what was the -- who were the teaching faculty, and such additional details, which are completely justified, which we furnished.

We have gone -- our committee did go through extensive efforts, and we have produced the most extensive documentation regarding the medical education in Vietnam after 1975 that can be found at the present time.

We recommended that the Board establish some type of advisory committee in order to be able to provide the affidavits or the certifications on the completion of medical school by former faculty members who had remained after 1975.

In July, '86, I presented the proposal. In September, 1986, the proposal was effectively rejected. And Dr. Rider, as a spokesperson of the Division of Licensing, announced the decision of the Division to consider the cases of the applicants on an individual basis.

The lady in question, the case of whom I have mentioned to you, went for no less than four different reviews, individual reviews. And on every single time, she was denied or there was some impossible conditions for her to fulfill which were imposed on her, which effectively resumed on a denial.

Because of the special situation of the inaccessibility and the unresponsiveness of the government of Vietnam, and the

medical school in Vietnam, those applicants seemed to be in really in a situation that they would never be able to get out of. So our committee at that point -- and Senator Craven is well aware of that, because of the involvement of Senator Royce, who is a member of the Senate Business and Professions Committee -- there was a hearing in Palm Springs in December of 1986, at which there were ample documentation and ample testimonies from all kinds of different medical graduates from not only foreign countries, but also from other States in the United States who brought out the inconsistencies of the Board, and really the arbitrary decisions and rules that the Board was applying for licensing of physicians.

Subsequently, after dealing with the Division of Licensing, and I have in that instance been present at every single of the meetings for approximately a year, since July of 1986, I thought and felt that my case had been -- had not been tried, and we had not received due process with the Division of Licensing, and we appealed to the Legislature.

All of you here have been clairvoyant into voting for SB 1358, introduced by Senator Royce, who, in 1987, proposed an advisory committee to the Division of Licensing, called the Faculty Council in Exile for the Vietnamese medical school. The bill was signed in September of 1987, and it is thanks to that bill that the applicant, Dr. Bup Dao, has been licensed.

My concerns in this instance that I'm putting forward to you is that during the period that Dr. Rider was in the leadership position of the Division of Licensing, an entire group

group of applicants -- not just one applicant -- was put into a situation in which we never received due process, and the Legislature had to help us out by intervening in this case.

And I would like to --

CHAIRMAN ROBERTI: Did BMQA oppose Senator Royce's bill?

DR. KIEU: Very vehemently. Actually, Senator, as you recall, they were the only opposition. Organized medicine, because of the previous background of the involvement of the American Medical Association, was not in a position on the bill. And Mr. Jay Michaels, that I've seen in the room, has testified in our favor in front of the Assembly House committee.

And even beyond that, on the eve of a major hearing for the bill, staff from the Division of Licensing circulated among all the Legislators' offices a summary of interviews of the proposed Faculty Council in Exile, the proposed members of the second Faculty Council in Exile, the individuals that we had proposed for that office. And they -- the conclusions, according to that report, was that the Faculty Council in Exile did not know what they were talking about. They were attesting to things that they did not know about. That none of them had any documentation about the people that they were attesting for, and that none of them had any records and were not even looking at any documents in order to do the affidavits.

All this truly borders on really personal attacks on the integrity of those individuals, who are well known to the American Medical Association, and are well known to all of our medical schools and are extremely respected people. And

moreover, as it was found out, the interviews in question were arranged hastily, just as the bill was appearing to gather some strength and some steam within the Legislature.

We had asked them to interview those individuals over a year, and the Division of Licensing never even considered doing that. There was some promises at some point which were never fulfilled, and yet, just on the eve of the major hearing, then this was done, before even staff or the interviewers had the time to formally complete their report, that document was circulated. The pseudo report was circulated.

Later on, it came out that none of the reports substantiated the type of allegations which were contained in it.

CHAIRMAN ROBERTI: Thank you very much.

Are there any questions?

DR. KIEU: Thank you, Senators.

CHAIRMAN ROBERTI: Thank you. We appreciate your testimony.

Assemblyman Filante is here. We know he has to go back to his duties. We will take Assemblyman Filante up,who is here to speak in favor of Dr. Rider's appointment, then we will break, and then we will go back to the opposition.

ASSEMBLYMAN FILANTE: Thank you, Mr. Chairman.

As a matter of act, I did not intend originally to come and speak on behalf of Dr. Rider's appointment, simply to introduce him from my knowledge of him and the Division and the Board itself.

But I will take just a moment to state that I do know the member of the Board, Dr. Rider. I have worked with him. At times I have found him rather irascible, much like people have found me rather irascible and hard to like, or whatever. But at least I could trust him to either work or refer to me the problems, and I don't have any hard evidence that he has done anything wrong.

However, I do have criticisms and share criticisms with other people about the operations of BMQA. I don't know that there's a physician or patient in this state who doesn't, but I could spend all day here on other boards that I would criticize. On balance, this is my experience.

For example, in terms of foreign medical graduates, I have spent a lot of time as a Legislator and as a physician on this problem. It's a very difficult problem. Today, a very large percentage of physicians being licensed in this State are foreign medical graduates; about 25 percent of the licentiates are foreign. So, if there is any sort of or apparent prejudice today, it may represent just an overwhelming number of applicants who would be, say, foreign medical graduates, or applicants who want to practice here in California, maybe, for one reason or another, which I don't want to comment on, that comes out as a smaller percentage.

When one out of four in the State are foreign medical graduates, that must say something about the process working.

I'm also very much aware of the problem Dr. Kieu was talking about. I and Senator Royce were both very intimately

involved in that problem in the Legislature, and I was personally involved with physicians, and then with the Board and the staff.

The Board did oppose the bill. I don't remember the details. However, in working with them, one thing I did find, Mr. Chairman and Members, was that the Board told me directly -- because I was one of the champions of this bill -- what their legal problems were and the problems they were having. And in fact, Dr. Kieu explained to me the difference between one date and another date, which the Board had settled on. Because of the occupation and the overrunning of the school, there were loss of records. They had put together the second committee.

I, in my experience, and I didn't have the experience of the Vietnamese doctors, but in my experience I found that the Board did come around to listening to all my complaints, or problems, or suggestions, and their position of opposition changed to a position of working with me with what they felt was a reasonable position. And I felt that we did work it out along with Senator Royce.

That was probably very similar to what was mentioned earlier by Mr. Zelman, because this Board, BMQA, does work very closely with the Attorney General. And to my knowledge -- although I'm not intimately involved and knowledgeable about that case -- I know they usually take directions from the Attorney General in their actions because they know that they have to be fairly legal in what they do or don't do.

So, I have not had this level of problem. I have had difficulties with the Board. I have not had personal

difficulties with Dr. Rider, maybe because I know him, and he's been responsive to me. But he and other members of the Board that I work with -- and I work with lots of them -- have been responsive, although they don't always agree with me. And I've always been able to manage to get a majority of the Board who will side with me on whatever is a legitimate issue, whether it be the Vietnamese physicians, or Philippine physicians, whatever.

The problem that has been here for foreign medical graduates, Mr. Chairman and Members, is the fact that, I guess Senator Craven was referring to that, there have been some schools that simply don't measure up to our qualifications. This Board, like many others, has not been able to adjudicate or to determine what the actual status was.

For that reason, the Board is now working with me -- and others, I assume, but with me as well -- and has suggested a way around this. That is to set up and bring California closer to the norm of other states. Most states require more than one year of postgraduate training, two or three for your license. We only require one. And so, what we're trying to do now, and I am supportive of this, and therefore we're working on the legislative proposal, is to have a uniform standard for foreign or domestic graduates. Three years of postgraduate training, which will obviate the need to carefully investigate each school, or all the other educational qualifications. You still have to have that, but you can't do it in many cases, Mr. Chairman.

And I support the Board, and I actually applaud the Board in trying to come up with a way that would work. I think

in one case they investigated four schools out of 2,000 to try to figure out what was up. They couldn't.

So, yes, I am supportive of Dr. Rider. No, I don't support everything the Board does, and I'm sure I can find something that Dr. Rider did I wouldn't support. He just hasn't given me as hard a time as others, apparently.

Thank you very much.

CHAIRMAN ROBERTI: Thank you, Assemblyman. We appreciate your joining with us.

ASSEMBLYMAN FILANTE: Thank you.

CHAIRMAN ROBERTI: We will now break for ten minutes.

(Thereupon a brief recess was taken.)

CHAIRMAN ROBERTI: The Committee will come to order.

I don't think I will be able to handle both this confirmation and other things that have come up in my office, unfortunately.

My preference would be to put this over. This is important. What I have to do upstairs is important, too.

I hate to do this to the witnesses.

SENATOR CRAVEN: Mr. Chairman, the thing that comes to mind is the fact that Dr. Rider has a few persons who've traveled some distance to get here today who would like to testify. I know that you're not interested in making them come back again.

I'm just wondering, could we take the time to hear from some of these people?

CHAIRMAN ROBERTI: Well, I think they want to testify after Dr. Grimm, Marc Grimm, who's an opposition witness. I'd be

willing to allow them to do that after Mr. Grimm, sort of as rebuttal, but that takes time. And I really think I should be here when that's going on.

SENATOR CRAVEN: Yes, sir, I agree.

I don't want to do anything, and I'm sure you would concur, to in any way jeopardize the presentation that Dr. Rider might care to make, either himself or through his witnesses.

The other thing I would want to be sure of is the fact that by postponing or truncating the thing, as we may, we don't impede --

CHAIRMAN ROBERTI: No, I will assure that that doesn't happen. I'm not concerned about that.

I will make sure that he has -- if I only had a May calendar. We'll be on the Floor the 25th and 26th. And because Dr. Rider is being pushed back, I would make sure that in case anything went wrong on the 25th or the 26th, that we'd also let him try again on the 30th, or have his choice between the 26th and Tuesday, the 30th, or Wednesday, the 31st, if that were the only way of taking care of his problem. We're going to be on the Floor, but there'll be two full session days on the 25th and the 26th, and what he would want, in case there was a controversy, would be to have two full session days where you have a full House.

If he didn't want to go on the 25th or 26th, we still have two dates after that. So, I will expedite, if there's a problem with him having the two best cracks at a full House that we could estimate -- it's impossible to totally figure out what

that's going to be. And I'm not even saying that's going to be the problem.

But right now, to have a complete hearing today, I think, would be very difficult.

SENATOR CRAVEN: I understand, and I don't disagree, although I'm somewhat saddened with the thought that we have to do it that way.

It's also unfortunate that two of our other Members are required in committees and are missing the testimony from either side.

But the thought just seems to pervade my thinking that a lot of what we've heard from what we'd call hostile witnesses has been very, very good and, I'm confident, accurate, but somewhat, as Senator Petris has so ably pointed out, reminiscent of the older days in the system. It's a sort of a systemic problem which has infected the system and continues.

It is not, in my judgment, attributable to Dr. Rider. And you can talk about leadership all you want, but if you're one of seven, that Board doesn't, you know, operate like a platoon leader, who doesn't take a poll as to whether we move forward or what we do. He does it. The military isn't a democratic organization, and I am presuming it operates just the opposite, and there is a great democracy, I suppose, involved in what is done here in BMQA. And the fact that the leadership may be there and may be very much favor does not necessarily mean that everybody is going to get in lock step behind him.

So, when you're one of seven, you know, on the best day you ever had, you're one of seven. And I think that we should keep that in mind.

I don't like to see so much of the ills of the system laid on the threshold of Dr. Rider's doorstep, because I don't think that he is the one who should be responsible for that.

CHAIRMAN ROBERTI: I think that point was also made by Mr. Zelman, who said he was not here in opposition to Dr. Rider.

I still have to hear the other witnesses as well, but I think I, for one, am not laying all the ills on Dr. Rider, if there are ills. I want to hear what everybody has to say.

SENATOR CRAVEN: I couldn't help but think when Mr. Zelman made his presentation, which was very, very good, that he was really not touching on Dr. Rider as an individual or as a personality. He was talking about something that I have described as being systemic. And I think basically it is.

You know, none of our bureaucracies, of which we have a plethora, are without sin. You know, we have a lot of problems no matter where you'd like to look. You and I can take off this afternoon her at six minutes after 4:00 to the first nearest bureaucracy, and if we can't find by six minutes after 5:00 something wrong with what they're doing, it would be unusual, in my judgment. At least, that's been my experience. Very few perfect people.

CHAIRMAN ROBERTI: I would suggest we have our hearing on the 24th, and then the rest of the hearing on the 24th, and that the witnesses return on the 24th.

SENATOR CRAVEN: May we ask Dr. Rider how many of his witnesses will be able to return, Mr. Chairman?

DR. RIDER: Mr. Craven, I really don't know. I haven't polled them.

SENATOR CRAVEN: Are they Northern Californians?

DR. RIDER: Yes.

SENATOR CRAVEN: Well, then, it's not like they're coming from San Diego.

DR. RIDER: If that's your will --

SENATOR CRAVEN: Well, no, I'll expose my devious ploy here.

I was going to find out how many, and if there were two who were coming from El Cajon, I was going to then prevail upon the Chairman to hear them.

DR. RIDER: The witnesses we have, is there anybody that can't come back on the 24th?

CHAIRMAN ROBERTI: You can conduct a hearing, but I will not be here to listen. I'll be glad to turn the hearing over to Senator Craven.

SENATOR CRAVEN: I appreciate your confidence, Mr. Chairman, but without you, we don't have a quorum.

CHAIRMAN ROBERTI: I really think I should be here to hear this.

SENATOR CRAVEN: I would agree.

DR. RIDER: Could we have three minutes to testify, and he would be the only one.

CHAIRMAN ROBERTI: Fine, please come forward.

DR. GEOKAS: My name is Dr. Michael C. Geokas. I'm a foreign graduate. I went to medical school in Athens and to graduate school at McGill University. I have a Master's and a Ph.D. from McGill.

I came from Greece in 1958. I was fully trained, licensed, and boarded in medicine and cardiology in Athens. I was chief medical resident at the Evangelismos Medical Center.

I went to Canada, Regina General Hospital, 1958, as a rotating intern. I studied from scratch.

The first time I met Dr. Rider was on the telephone from Regina, Saskatchewan, asking him to provide me with a fellowship in gastroenterology. I wanted to be a stomach specialist. The man was unreal on the phone. I never met him in my life. He asked me to send my credentials. I had, of course, credentials, and then I received a second telephone call in about two months. I got the position.

As I understand it, there were twelve candidates for two positions; two-thirds of them graduates of American medical schools.

CHAIRMAN ROBERTI: And you were a graduate of --

DR. GEOKAS: Athens University in Greece.

CHAIRMAN ROBERTI: But you said you got postgraduate at McGill?

DR. GEOKAS: Yes, at McGill. That was after training --

CHAIRMAN ROBERTI: That was after this application?

DR. GEOKAS: After.

I went to San Francisco. I trained for one year with Dr. Rider.

What I'm going to tell you subsequently reads like a novel. I got all the rest of my training in the United States, and then went to McGill. Then I returned to USC and the faculty in 1966 as Assistant Professor. In 1968, I was Associate Professor. 1970, I was full Professor of Medicine and vice chairman of the Department of Medicine at UCLA for four years.

In 1974, I moved to Davis as Professor of Medicine and Chairman of Medicine at the Martinez V.A. Medical Center. I am also a Program Director. I have over 50 physicians in training I'm personally responsible. One of these physicians is in the audience.

What I'm trying to indicate to you, I feel qualified to make the statements, Mr. Chairman. I get the doctors immediately after medical school. I get applicants from all over the United States and Canada who come to my department for training through the famous matching program. I get also applicants from all over the world: from Jakarta, Indonesia; from Rangoon; from Iran; from Argentina; from Paraguay; from Zambia; from Europe -- you name it. An avalanche of applicants.

Mr. Chairman, I don't need to tell you that Northern California and Southern California, it is a very desirable place to live. Most of the physicians in American want to come to California to practice medicine. Most young physicians from around the world have the fantastic attraction, like a magnet, to come to the United States to practice medicine.

Europe is socialized all over the place, from Italy to England, from Greece to Spain, everywhere. What I'm trying to tell you is this. We have an enormous attraction for people, foreign graduates like myself, to come to United States.

I would digress, though, and tell you a little bit about the actual medical school training in the United States of America. Mr. Chairman, I submit to you in this blessed country, we have the strictest, the most fascinating, the most well-organized, the most brilliant training program in medical schools. What the young people go through in medical schools in United States, it's grueling. They need four years of training in college. They need to have a GPA of 3.5, and they have to pass the exams that are tantalizing, and they have to have letters of recommendation, and they have to pass a personal interview that is also grueling.

So now then, the education in the United States and Canada, it's absolutely superb. It is the area of preeminence of this country, without dispute, all over the world.

So now then, the licensing boards all over the country -- I had problems with the Licensing Board because I had students I wanted to help. The Licensing Board has an enormous task to perform, let's face it. This is no mean business. This is not small business. You license somebody to practice medicine, Mr. Chairman, I will pull my license from my wallet. Do you know what this says? Physician and surgeon. Sir, it says I can perform your surgery on your daughter, knock on wood. It is a very important document. That's why we have got to have rules.

I'm for empathy. I'm for compassion. I'm very strong supporter of foreign graduates. I have foreign graduates in my program. But I cannot admit, willy-nilly, everybody in the program. I have to protect the patients.

But to Dr. Rider, as I said, I know him for 30 years. He trained me as a gastroenterologist. Are you ready for this? I trained his son as a gastroenterologist in my department. I closed the loop. Not only that, I made Dr. Rider an Assistant Clinical Professor at Davis, and he is a consultant in my department. This can occur, Mr. Chairman, only in the United States.

You go to Germany to do what we do in here, they would laugh at you. If you are not a German citizen, if you did not study in Heidelberg, Senator Petris, if you did not study in West Berlin, they would laugh at you.

In this country we have freedom, we have democracy, and I'm all for it. I'm the luckiest guy in the world. I'm a foreign graduate who has made it in this country. I outrank my Dean over the School of Medicine. I'm a Senior Professor at Davis.

However, Mr. Chairman, we have 27 million Californians to protect. They say that life is like a whirlpool. Once it sets agoing, it spins on and on. And in its tendency to spin on and on forever derives life's purpose to go on living.

We've got to protect the physicians, our protectors of life. And people age and die, and still need physicians. We've got to protect the people in California.

I have nothing against foreign graduates. There's some brilliant people, some very successful people.

By the way, Mr. Zelman said earlier that foreign graduates are relegated to some areas, underdeveloped areas. That's not true. Mr. Chairman, there are some stellar personalities from all over Europe, Southeast Asia, Japan, South America, that are very successful in this country.

To sum it up, I'm in full support of Dr. Rider. I know him as a gentleman and a scholar. Some workaholic, some excellent gastroenterologist who practices in San Francisco. I asked him several times about foreign graduates because he was on the Board. He told me I will ask for a review of the credentials. No ifs, no buts, no favors. I'm a department chairman, I know what I'm talking about.

I receive phone calls, Mr. Chairman, from Legislators, from Congressmen, from Barbara Boxer, from George Miller, from Vic Fazio. They have people they want to put in training programs. I have to be myself. I have to check the credentials. So did Dr. Rider.

Not in one instance I found him not to be on the level. And I heard the testimony, and some of the testimony hurts me, because here you have a public servant who is trying his best. And I understand there will be misunderstandings. Why? It is complicated.

You know what I noticed in your Committee, Mr. Chairman? You had four confirmations before of top executives, and you asked, "Any opposition?" Nothing! Silence! No opposition. Of course.

We are talking here about an important issue in an important profession. The business of making doctors is a very important business for the health of our people. That's why you see the noise. That's why, ladies and gentlemen of the Committee, you see the vibrations.

Everybody wants to practice medicine. This is a lucrative profession. There's lots of prestige. The immigrants in Athens told me before I came to America that the doctors have prestige next to the President. You go someplace and you say you are a heart specialist, and you are the center of attention for the rest of the evening. I should know. I go places, and people treat me like I'm a celebrity. Senator Petris treats me nice like I'm a celebrity because he calls me --

CHAIRMAN ROBERTI: He doesn't know when he's going to need you.

(Laughter.)

DR. GEOKAS: So now then, this is very important. It is very important for the Board. The Board is not perfect. I think that Senator Craven said it before, there is no perfection.

I told the young people -- as I said, I have 50 people in training -- they tell me that's not fair. I say, young man, listen to me. There are lots of things in life are unfair and nothing is perfect.

So a licensing board is a gate-keeping operation. They're oppressors.

I watched a documentary, Mr. President, from the Second World War. You know what happened in the Second World War?

Perhaps you are too young to remember. There was rationing in the United States, and they say that they took it very nicely, the American people, the rationing in everything except one: except gas, gasoline. The rationing of gasoline. There is no larceny, there is no rascality, there is no theft that was not used as related to gasoline rationing. There is a little half-hidden knot in one of the gasoline stations. It says, "No tickee, no gasee."

See, it is almost the same thing. This is a very desirable profession in America. This is the last remaining bastion of free practice of medicine. It is -- private practice is a very rewarding profession. Some of the physicians still make lots of money. I'm not one of them so I can talk.

So to sum it up, I think that Dr. Rider is a very good public servant. I very strongly support him. As a Program Director in charge of postgraduate education and teaching medical students, I really understand the issues involved. I have all the sympathy, tremendous compassion for foreign graduates. There is one, as I said, in the audience. Her first name is Marna, a very lovely young lady, who is my resident, Mr. President. She works for me at the Martinez V.A. Medical Center. I took her among a cluster of 15 candidates because she had the credentials.

So, I fully endorse Dr. Rider, and I ask the Committee to see through the lines, and to understand that this is a highly technical problem, a problem loaded with emotion, self-interest, which is understandable, but Dr. Rider is a gentleman and a scholar American.

Thank you.

CHAIRMAN ROBERTI: Thank you.

SENATOR PETRIS: Mr. Chairman, I would like to ask Dr. Geokas to tell us a little bit about a program of his in Martinez which bears directly on our deliberations.

It involves a reach-out program that he created for young students, even at the high school level, who come in for a series of lectures with their parents, with emphasis on minority students. He has been encouraging them, of all creeds and races and so forth, to go to medical school.

I'd like you briefly to describe and tell us how many students are now doctors who have gone through your program?

DR. GEOKAS: Thank you, Senator.

Mr. Chairman, I started in 1975 a program in my department, which is an affirmative action program for minorities and women. I'm trying to help them to get medical school. They come from Berkeley, U.C. Davis, and other colleges in Northern California.

This program has been highly successful. At least half is women and minorities: Asian-Americans, Blacks, Mexican-Americans, even American Indians. There was one specific American Indian, a half Cherokee Indian, from Kansas who had a law degree from Boalt Hall at Berkeley, and he took my program, and he was admitted to medical school.

This program has made the Congressional Record twice: once in '76 by Bob Legget, and once in 1983 by Barbara Boxer. It's an affirmative action program for minorities and women.

I feel today -- I calculate grossly about 500 students, women and minorities, and of course, other students, have made it, and they are practicing physicians in all subspecialties in medicine from around the country.

So, this is the type of program that we need, an outreach program for foreign graduates. They need help. They need clinical training. They need to catch up with the American level of medical education. They have to read the language, to improve their language, and understand the culture, and also improve the technical information.

I think some day some program will be developed to that effect. It will alleviate all this emotion and commotion.

CHAIRMAN ROBERTI: Thank you very much, Doctor.

We're going to put the rest of the hearing off until the 24th. I hope everyone can come back. I'm going to turn the Chair over now to Senator Craven.

SENATOR CRAVEN: thank you.

Is it your desire, Mr. President, to have me hear from some of the other witnesses?

CHAIRMAN ROBERTI: I'd rather put it all over to the 24th.

SENATOR CRAVEN: Just continue with the agenda. In effect, recess the hearing now in progress?

CHAIRMAN ROBERTI: Yes.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 4:25 P.M.)

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of May, 1989.

Evelyn Mizak

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Shorthand Reporter

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STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 17, 1989

1:58 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

W. DON MAUGHAN, Member and Chair
State Water Resources Control Board

ELISEO M. SAMANIEGO, Member
State Water Resources Control Board

SENATOR ART TORRES

JOE G. SANDOVAL, Secretary
Youth and Adult Correctional Agency

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P R O C E E D I N G S

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CHAIRMAN ROBERTI: We will now go to Governor's Appointees, W. Don Maughan, Member and Chair of the State Water Resources Control Board.

MR. MAUGHAN: Yes, I'm Don Maughan.

We will ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position.

MR. MAUGHAN: Well, I've had about 45 years' experience in the water business, and I've been on the State Water Board four different terms; this would be the fourth term. So, I've had a lot of experience on the Board itself.

I've spent many years with other water departments in the State and in Arizona and on the federal level.

CHAIRMAN ROBERTI: Any questions of Mr. Maughan? Senator Petris.

SENATOR PETRIS: As a Bay Area resident, I'm concerned with protecting the Delta and watching for the salinity problem, and so forth. We've had a lot of debates on the Floor with some of Senator Ayala's bills in which he constantly refers to the Raconelli decision. I'm sure you're familiar with that.

MR. MAUGHAN: Yes, I am.

SENATOR PETRIS: Which ordered the Board to do certain things.

MR. MAUGHAN: Yes, I am, Senator.

SENATOR PETRIS: What is the current status of the Board's efforts to comply with the Raconelli requirement to make a plan and so forth?

MR. MAUGHAN: Well, perhaps the Senator has heard that last November, we put out a draft report which was not well received.

SENATOR PETRIS: Yes, I've heard of that. Very controversial.

MR. MAUGHAN: So, we think it's very important to be reasonable and balance all these factors. We're, as a Board, strongly supportive of the Raconelli decision. We're trying to comply with it in every respect.

After all the opposition that we heard, we decided to come up with a new work plan for the Bay-Delta, a work study and water quality control plan, salinity plan, and water rights decision. We put out a new work plan which is now under review by all parties. We promised everyone an open chance to present any additional testimony on this. It's a very difficult, complex area in terms of reasonableness and balance.

We certainly fully intend to protect the public trust values as a Board. I certainly commit myself to that.

SENATOR PETRIS: When do you expect to have this thing completed?

MR. MAUGHAN: The current schedule will be 1992.

SENATOR PETRIS: Now, in the meantime, some environmental groups had petitioned the Board to adopt an interim plan to provide minimum protection, and that was turned down. Can you tell us why?

MR. MAUGHAN: Yes, I think I can explain that, Senator.

We have to go by certain rules which would require us, even if we put out interim standards, probably to go through a two-year process at least, because we'd have to have public hearings; we'd have to allow everybody to speak. We'd then have to come up with a proposal and present that to the public and allow it to be heard, and if any adjustments are going to be made, it may even have to go through that a second time.

We are a public entity, required to do everything in public. We don't have the authority to just quickly put on interim terms. We just don't have that.

So, in my view, if we turned our attention, we might get out interim ones in 1991, and then it would postpone the final ones probably in two or three years, which would be 1994-1995.

SENATOR PETRIS: Of course, the petitioners disagreed with that very strongly. They seem to feel you do have authority, and you can act more quickly and not wait until '91 --

MR. MAUGHAN: That isn't --

SENATOR PETRIS: -- on that basis for certain minimum requirements. You don't agree with that, obviously.

MR. MAUGHAN: No. Our attorneys, and as the way I read the law, even if we tried to put out anything on an interim basis, it has to go through almost the same process as the final one.

SENATOR PETRIS: Now, there's some bills pending I'd like to get your opinion on, or the Board's if they've taken a position.

One of them is an Ayala bill to go ahead and build the Auburn Dam and provide the flow --

MR. MAUGHAN: We have not taken a position on that bill, but if you want to ask a question of my opinion, I'll be glad to try to answer.

SENATOR PETRIS: What's your position on it?

MR. MAUGHAN: Well, I don't think they studies --

SENATOR PETRIS: Do you think it's good public policy should we do it?

MR. MAUGHAN: Well, I don't think the studies have been completed to show just exactly what would be the result of that proposal. How much protection would be required either in the Delta or the Bay is unknown at the present time. The State Board's working on that.

So, it's very hard to appraise what the value of it is. At the moment we're neutral on it, but we think some considerable studies are needed to find out just exactly how that would work out.

SENATOR PETRIS: What about the specific question of who pays for it? Under the Ayala bill, it's the State taxpayers in general on the water itself. Traditional policy has been that the users pay, which in this instance would be largely agricultural users.

Do you have an opinion on that?

MR. MAUGHAN: Well, if I understand his bill, if the water was released for Bay and Delta protection, it would be more in terms of a flood control, general public good. That's what

his bill indicates is the first purpose. And whatever proportion of the cost of the dam relates to that, I think it ought to be on the general taxpayer.

But the water conservation or power, I think, ought to be on the users, the users of those benefits.

But as I understand his bill, the first purpose would be to release water for Delta -- meeting Delta standards.

SENATOR PETRIS: That's right.

MR. MAUGHAN: I personally think that is a public responsibility.

SENATOR PETRIS: And where does the private pick up? After it leaves the Delta?

MR. MAUGHAN: Well, if there's any water specifically regulated by Auburn Dam for consumptive use, either in the Valley or in Southern California, I think they would have to pay for it.

SENATOR PETRIS: From there on?

MR. MAUGHAN: Yes.

SENATOR PETRIS: The other bill is SB 614 by Senator Doolittle. It would prohibit the Board from establishing any more flow restrictions.

MR. MAUGHAN: Well, the Board has considered that, and we do oppose it at this time.

SENATOR PETRIS: You're opposed to that?

MR. MAUGHAN: Yes.

SENATOR PETRIS: Do you agree with that position?

MR. MAUGHAN: Yes.

SENATOR PETRIS: Why?

MR. MAUGHAN: Well, here again, it only deals with part of the situation, and it has not been fully evaluated. For one thing, it's sort of tied in with the Auburn Dam, and if the Auburn Dam proposal were approved by the voters, the bond issue in 1990, and Senator Doolittle's bill would be operative, and the Auburn Dam may take 10 or 12 or 15 years to build, for all I know. In the meantime, there would be no change in the current standards in the Delta, and I'm not sure if that's the right way to go over the next 10 or 15 years.

SENATOR PETRIS: A couple other areas, Mr. Chairman, if I may.

CHAIRMAN ROBERTI: Yes, please.

SENATOR PETRIS: During those water fights, I've always offered an amendment to Ayala bills to require a certain amount of conservation. I forget -- two million acre feet by January, 1990 or '91, something like that. It's the only amendment that carried in the 20 or so offered to the Ayala bill. It's the only one adopted.

What, if anything, is the Board doing to encourage conservation of water, particularly by the agricultural interests who are often accused of not making any effort toward conservation since they always seem to get all the water they want?

MR. MAUGHAN: Well, we've done a number of things, going back even 15 years. But most recently, we were instrumental in pointing out that the Imperial Irrigation District was wasting water, and took action which they now, tentatively anyway,

reached an agreement to conserve 100,000 acre feet from an agricultural area to make it available for the Metropolitan Water District in Southern California.

We're also working very closely with the drainage problems in the Valley, which reaches into the need for the highest efficiency economically possible there. And as we look at our permits and the conditioning of those permits, and also any new applications, we are requiring a very high order of conservation, and we're encouraging it everywhere.

We've provided the Department of Water Resources considerable funds for their water conservation group. I've kept track of those reports, and a lot of the farmers are using them and moving ahead. We've approached it from several angles.

SENATOR PETRIS: How many is a lot?

What I get from the critics is, it's precious little. If you have information that there's more, I'd like to know.

MR. MAUGHAN: Well, I think there's more than some of the critics say.

During our first phase of the Bay-Delta hearings, we received many days of testimony on it. One very good expert from Davis indicated that he didn't think that more than 200,000 acre feet more in the Valley could be saved. I think it could be a little bit higher than that, but --

SENATOR PETRIS: What are the principal methods of conservation?

MR. MAUGHAN: Better irrigation applications, like --

SENATOR PETRIS: Using the drip system?

MR. MAUGHAN: Drip system, which is fairly expensive; land leveling. There's quick act -- shorter runs so that you don't have a lot of deep percolation, and things like that.

SENATOR PETRIS: Another area of concern is the ground water, two areas. One is, we've never seemed to be able to enact some controls to compel people who use the ground water to marshal their resources properly and so forth.

The other one is the nitrogen content. Now, your own report indicates some very damaging information in the shrinking supply of drinking water because of the nitrogen impact in the L.A. area, Metropolitan Water District, for one, and the Salinas Valley, indicating they're going to run out of it by the year 2000, or have a very substantial reduction.

Can you tell us when this problem first came to the attention of the Board on the nitrates? And secondly, when it's going to start to move on that?

MR. MAUGHAN: Well, here again, we have done some work in the past in certain localized areas, but until that report came out, we had not tried to look at the entire State.

I agree with your statement, Senator, that it's a very serious problem needing a great deal of attention.

There are a number of places. I can think of one in the La Pinata area, where they'd had septic tanks. We provided the funds to get everyone off of septic tanks so that it would help the ground water table, even though it had been badly damaged at the time.

We've done that similarly right now up at Chico. Theirs is another similar problem.

We do have some authority over anything that discharges into the ground, and we've been taking some steps around the State on an individual basis. In Ventura County we have two.

SENATOR PETRIS: I asked you about how the costs should be distributed on the flow of the water and the use, and so forth.

I have the same question on solving the problem of nitrates. Who should pay for that?

MR. MAUGHAN: Well, here again, one would have to look at all the fiscal situations in the State.

I think the protection of resources, surface and ground water, and I think they belong to the people of the State, not to any individual. There is a broad responsibility on the taxpayers.

On the other hand, I certainly think that there needs to be some partnership of the people who are directly beneficiaries of these projects.

My own view would be some arrangement which I think elected officials, who are better skilled than I am, could work out some sort of a funding in which there would be general help along with certain requirements at the local level or the direct beneficiaries of any project.

SENATOR PETRIS: We often look to you for guidance.

MR. MAUGHAN: Well, I think --

SENATOR PETRIS: I'm asking you for guidance.

MR. MAUGHAN: Well, right now I couldn't tell you what the percentage is. I have no idea what the cost is going to be.

Certainly we're working on that. This report tells us it's a very serious problem. We just haven't reached the stage that I can answer your question right now.

SENATOR PETRIS: You're still in the follow-up process?

MR. MAUGHAN: And we will do so.

SENATOR PETRIS: Now, a lot of these problems are aggravated by over irrigation. Is the Board consciously working on that as well?

MR. MAUGHAN: We certainly are, under the constitutional amendment that anything that is waste and unreasonable use, we have certain authorities. It took us, you know, five years in the Imperial Irrigation District, but we do have that behind us. I think it's a good page that we can use elsewhere in this State if we feel that there is over irrigation or any waste.

SENATOR PETRIS: What steps? What kind of teeth do you have on this or the prior questions about what the Board can do?

MR. MAUGHAN: Well, we can put out an order and indicate that if that is actually occurring, that either it's stopped, and we concur that it's stopped, or some of their water rights may be taken away from them, or some other kind of a penalty can be assessed. We can go to court.

SENATOR PETRIS: What do you have? What kind of sanctions are available to you?

Number one, you can take certain water rights away regardless of preexisting contracts, because that's probably not only in the statute, but in the contract, too; right?

MR. MAUGHAN: Right.

SENATOR PETRIS: So that's the heaviest blow; cut your water off, in effect.

MR. MAUGHAN: In fact reduce their rights.

SENATOR PETRIS: Has that ever been done?

MR. MAUGHAN: No, not to my knowledge it hasn't been. It's a very serious step.

I think that maybe some additional legislation would help for some intermediate steps that people will respond to. I've worked throughout the West, and I do know that some of the other states have a little more control over that from legislation.

SENATOR PETRIS: There's nothing in between, between zero and --

MR. MAUGHAN: Not significant, no.

SENATOR PETRIS: What do you recommend? Fines?

MR. MAUGHAN: Fines are working pretty well in the water -- waste water discharge. We have authority there, and I think it's helped prevent some pollution throughout the State because we did have that authority.

SENATOR PETRIS: What else can we do as an intermediate step?

MR. MAUGHAN: I think between those two, you know, it's been my experience that if everyone realized they had to apply the same rules, that they'll voluntarily do a lot better than they are doing right now. So, I don't know that you need a lot more sanctions than what we just talked about, if we could just apply them and work on them.

SENATOR PETRIS: Aren't they all subject to the same rules now?

MR. MAUGHAN: Well, we don't have the fining authority for surface water use. We don't have any authority over how much ground water is extracted.

SENATOR PETRIS: Do you think you should have?

MR. MAUGHAN: Well, this again is a very difficult thing for me to say.

California is a very diversified state, and some local ground water management districts have done just outstanding jobs in it. And I think that they ought to retain that.

But where that has not taken place, I think they ought to have the opportunity to show they can do it on a region or localized basis before the State steps in.

SENATOR PETRIS: Well, haven't we had enough years of experience to know right now who's doing it properly and who isn't?

MR. MAUGHAN: Well, here again, I think there's a difference of opinion among people.

I've worked in the State of Arizona, where they decided to take a rather drastic step on ground water use. I don't this this State is ready for it, and it would be very -- it's such a big State, I think it would have to be very carefully conceived and worked on by a number of people, including those directly affected. That just hasn't been done.

SENATOR PETRIS: You don't think the climate is ripe?

MR. MAUGHAN: I think it's approaching the time, but I don't think it's quite ripe yet.

SENATOR PETRIS: What can the Board do to hasten it?

MR. MAUGHAN: Well, we did put out a ground water report which has been widely read and widely used. It's just the very first step, though. It didn't cut right to the jugular, or anything like that. It just made everyone aware of the problem.

SENATOR PETRIS: What's the next step?

MR. MAUGHAN: Well, certainly the federal government is getting into the field, and this is something that worked in Arizona.

I think that it ought to be at the local level, and then the State level before it gets to the federal level. And then if that isn't done well, I think the federal people will come in and do something on ground water.

The next step is to work with the various people. It's a very ticklish subject here in the State of California, I've found out. I think one of the first meetings I attended after I returned from Arizona was to forewarn me that don't try to bring Arizona ideas over here, by a great number of water people.

SENATOR PETRIS: That doesn't make them wrong, though, does it?

MR. MAUGHAN: No, I'm just telling you how sensitive it is.

SENATOR PETRIS: As one who's seen both, you know, and lived in both states, don't you feel we could benefit by using some of the Arizona mechanisms?

MR. MAUGHAN: I think there's room for improvement in considering how to use and protect that quality of the ground water.

SENATOR PETRIS: Would you offer those to the Board or to us if legislation is needed?

MR. MAUGHAN: Here again, I would have to see how the other Board members feel about these various propositions. We have five equal votes on our Board.

SENATOR PETRIS: I understand that, but on every issue there's a leader. We're looking to you, at least I am. Would you take the lead on that?

MR. MAUGHAN: I've been hit over the head a few times.

I'm certainly wide open to do these kinds of things, and I've been talking it up in ground water conferences and so on, but if the time is not ripe, no matter how good the idea may be, it doesn't do you any good.

SENATOR PETRIS: I would urge you to push it.

All the great leaders are known for the bumps on their heads. I'm sure you've got your share, but we're going to ask you to offer your head for a few more.

MR. MAUGHAN: Well, I appreciate your comments, Senator Petris.

I don't think -- if it's properly done, you can put some things into law that people will comply with, 95 percent of them, or maybe even higher than that. So, it's just urging. But some people spread the specter that you're going to go in and tell them exactly what kind of crops you can grow, some of those things, and it's hard to overcome that, I think.

SENATOR PETRIS: What I'm thinking of is using the Board as a forum, you know, just like in the Legislature. A big part of the legislative process, especially for the bills that are not enacted -- they just don't get the votes -- is the education that goes on at that time. While you're fighting over an issue, you're discussing the problem, and you're discussing certain solutions, and that's how we all learn.

I think if the Board got into that more and more, a very good side effect would be that the rest of us would learn from it. And as we do, the climate to go in the right direction gets more receptive.

Don't you agree?

MR. MAUGHAN: I certainly agree, and I think that's the road we're on.

SENATOR PETRIS: So I would encourage you to continue. There's no dishonor in losing when your cause is right. We all lose somewhere along the line. In fact, in my case I lose more than I win.

MR. MAUGHAN: I really think we're on a road very lose to the direction you're talking about.

SENATOR PETRIS: Well, thank you very much.

Thank you, Mr. Chairman.

CHAIRMAN ROBERTI: Thank you, Senator.

Any other questions? Is there any opposition in the audience to Mr. Maughan's appointment?

SENATOR CRAVEN: Move Mr. Maughan's confirmation to the Floor.

CHAIRMAN ROBERTI: Senator Craven moves the confirmation of W. Don Maughan to the position of Member and Chair of the State Water Resources Control Board.

Senator Mello.

SENATOR MELLO: Mr. Chairman, no question of Mr. Maughan.

I was going to ask Nancy if we had any letters in opposition to Mr. Maughan from Members of the Legislature?

MS. MICHEL: Senator Leonard has registered his opposition.

MR. MAUGHAN: That's the only one I've heard of, too.

CHAIRMAN ROBERTI: That's the one I have in my file as well.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to nothing; the confirmation of Mr. Maughan to the Senate is recommended.

Congratulations.

(Thereupon the Rules Committee acted upon legislative items on the agenda.)

CHAIRMAN ROBERTI: The second appointment is Eliseo M. Samaniego, Member of the State Water Resources Control Board.

Mr. Samaniego, we'll ask you the same question, and that is why you feel you're qualified to assume this position?

MR. SAMANIEGO: Senator, Members of the Committee, I serve as the public member designee of the State Water Board, aside from the other members who have other specialized expertise, so legislated to two engineers, one is an attorney, one is a water quality expert.

The public member apparently, at least by legislation, does not require a special technical background, but I do in fact have a Doctor of Pharmacy Degree from the University of Southern California.

Prior to appointment to the State Board, I served on the Central Valley Region Board through several terms and several appointments by the previous administration, and then subsequently by the current administration. Then I enjoyed current appointment to the Board by the current administration also.

During that time, I have accumulated some expertise and some knowledge. I am comfortable in what I am doing, and I think I continue to be qualified to do that.

CHAIRMAN ROBERTI: Thank you.

Any questions of Mr. Samaniego? Senator Petris.

SENATOR PETRIS: What's the first year you were appointed to the State Board?

MR. SAMANIEGO: '85.

SENATOR PETRIS: As a pharmacist, you have better insight on water quality than the rest of us. I mean, you know the stuff that's in there.

What do you think is our worst water quality problem now under your jurisdiction?

MR. SAMANIEGO: In terms of the amount of water affected, it's nitrate. The volumes, the quantity of water affected, it's the nitrate issue.

SENATOR PETRIS: What's the source of that? Is that a natural thing?

MR. SAMANIEGO: Certainly some of it is natural. A great deal of it is attributed to agricultural practices. And we have large problems attributed to sewer systems or septic systems, individual systems to homes, that become accumulated in a circumscribed area that has poor dissipation capacities because of shallow soils or fractured rock.

SENATOR PETRIS: What authority does the Board have to do something about that source, the septic tank systems?

MR. SAMANIEGO: I believe the basic authority rests with the Regional Boards. And they have any number of waste discharge requirement procedures, ending with an absolute prohibition to connect to or to continue using. Such is the case in a number that I can recall. The most recent one is the Chico area that has now a current prohibition to individual systems.

SENATOR PETRIS: Is that imposed by the Regional Board?

MR. SAMANIEGO: It was imposed by the Regional Board and, I believe, reaffirmed by the State Board.

SENATOR PETRIS: Does the State Board monitor the Regions to see how things are going in the problem areas?

MR. SAMANIEGO: The monitoring really, I think, occurs by the public themselves, in that there is an appeal process to us, that when things don't appear equitable or fair, then those issues are brought to the State Board.

SENATOR PETRIS: Do you think that's working?

MR. SAMANIEGO: I think it's working well.

SENATOR PETRIS: What is the Board doing about nitrates? Let's say about the man-made part of it; let's say the agriculture, for example?

MR. SAMANIEGO: Well, we have addressed that issue in a number of different forums. I personally have spoken to a number of groups who use those products and have used my background to describe activities that would encourage a better use of -- and I have often used the thought that comes to me from pharmacy, and that is that many of us think that if one pill is good, two should be better. At times, agricultural practices seem to have fallen into that category in that there isn't a precise way to control application.

One recognizes that enhanced growth and productivity is by adding nutrients to the soils.

SENATOR PETRIS: I would think that your voice would carry more credibility than the laymen, who don't have a chemistry and pharmacy background as you do.

Are you getting the responses?

MR. SAMANIEGO: I think I am. We are currently engaged in a new waste management study for dairies. There's a tremendous flux, you know, that is occurring out of the Southern California area to the Central Valley. And before that problem gets away from us, we're trying to devise a waste management scheme that takes us from absolute numbers of animals per acre to a best management plan that will direct how to manage the waste load, solids and liquid wastes.

SENATOR PETRIS: Is there an alternative to all the nitrates?

MR. SAMANIEGO: Pardon?

SENATOR PETRIS: Is there an alternate substance to nitrates that's less harmful that can be used?

MR. SAMANIEGO: For productivity?

SENATOR PETRIS: Yes.

MR. SAMANIEGO: As a nutrient?

SENATOR PETRIS: Yes.

MR. SAMANIEGO: Nitrate is an essential element for all plant life.

SENATOR PETRIS: All the soil.

MR. SAMANIEGO: Yes. Now, there are micronutrients that also become very valuable, but by and large, application of nitrate means more prolific growth, means more healthy growth, greater crop yields. Even in our homes we use it in such a manner that, we use it for our --

SENATOR PETRIS: What's the down side of nitrogen? What is the harm that that causes?

SENATOR MELLO: Ultimately it reaches ground water. And a great deal of our supplies for drinking water purposes is ground water. When those levels exceed certain health standards, there is a risk.

SENATOR PETRIS: What's the problem? Is it carcinogenic?

SENATOR MELLO: No, I don't believe it is.

Those areas that have been identified more affect young children and infants because the nitrate and the nitrite complex occurs once it passes through our system, ties up some of the oxygen-binding sites for hemoglobin, causing a methemoglobin anemia. It's commonly called the Blue Baby Syndrome. Failure to thrive would be a common symptom in children.

Fortunately --

SENATOR PETRIS: That gets to them how? Through the drinking water?

MR. SAMANIEGO: Through the drinking water. They're more susceptible than us, than older --

SENATOR PETRIS: Are there any particular parts of the State where that seems to be worse than others?

MR. SAMANIEGO: There have been a number of areas that have been very intensively reviewed. We recently did, of course, the review on Chico. And of interest to me was how many or how much morbidity was in fact attributed to the ground water nitrates. And a lot of folks are still drinking that kind of

water with nitrates exceeding 45 milligrams per liter, which is the health standard.

Health officials in those areas failed to identify any singular cause or morbidity to those ground water -- to the use of that ground water as drinking water.

SENATOR PETRIS: I've carried legislation over the years on promoting sustainable agriculture to encourage farmers to seek alternate methods without relying on the pesticides. I don't know where nitrogen fits into all this, but it's part of the problem, obviously.

Has the Board shown any interest in encouraging farmers to use alternate methods to avoid contamination of the ground and the water?

MR. SAMANIEGO: I don't believe that we've had a proactive program to do that. We have, on the other hand, encouraged farmers, or anyone who drains to surface or that affects ground water, to use practices that are reasonable and that are manageable and that produce the desired effect.

When they don't, then we have the regulatory arm to cause cease and desist orders to be issued, and cleanup and abatement orders.

SENATOR PETRIS: Which arm is that? Arm of your agency?

MR. SAMANIEGO: Correct.

SENATOR PETRIS: Now, you mentioned speaking to groups; farmers, I assume.

What about the companies that sell this stuff? I've had this running battle for years. People think it's with the

farmers, but it isn't. It's with the peddlers, the chemical companies and oil companies that own and produce all this stuff.

Had you had any contacts with them as a step before it gets to the farmer? Are you encouraging them to try alternate methods that are less harmful?

MR. SAMANIEGO: Yes, I have been a speaker at their association meetings, and most recently the Fertilizer Association in San Diego, and, in fact, conveyed to them the direction of our Board with regards to control of contaminants to ground water, not only in the form of nitrates, but other additives that are used and formulated and used for agricultural purposes.

SENATOR PETRIS: Have you been invited to come back?

MR. SAMANIEGO: As a matter of fact, I was invited back this week, yes.

SENATOR PETRIS: You were?

MR. SAMANIEGO: Yes.

SENATOR PETRIS: You can add my message to yours, if it'll help us.

MR. SAMANIEGO: Yes.

SENATOR PETRIS: I'm interested in the Doolittle bill that I asked the prior nominee about.

Are you familiar with that, relating to prohibiting the Board from adopting any more restrictions on flow?

MR. SAMANIEGO: I am reasonably familiar with it. I'm not astute of the legislation that's in process now, but we do --

SENATOR PETRIS: I understand the Board has taken a position opposing the bill.

Do you agree with that position?

MR. SAMANIEGO: That position was taken even before we saw the written language of the bill. And I think the reason that we have that position, or we expressed a position, was that it preempted a water rights issue that, for us, is a quasi-judicial type of process that requires very special kinds of fact finding of hearings that lead us, then, to conclude whether you change a water right.

SENATOR PETRIS: What does that mean with respect to your opinion on the bill? Would you differ from the Board on that?

MR. SAMANIEGO: I think it would be precluding a great deal of process before I would be able to give you a direct answer as to what I thought about it.

I don't think that anyone should be so exempted so catastrophically from a responsibility to a public trust issue, but I understand that you could legislate and make that issue. We would be compelled, then, to follow that.

SENATOR PETRIS: But you're not telling us which way you ought to go, or suggesting.

MR. SAMANIEGO: No, sir.

SENATOR PETRIS: It's okay to do that, you know, if you want. I mean, you can make recommendations to us. There's nothing wrong with that.

MR. SAMANIEGO: I don't believe that our Board is constituted in such a manner that we should be advocating, you know, legislative measures.

SENATOR PETRIS: Why not? What's your mission?

MR. SAMANIEGO: I think our mission is to protect the beneficial uses of the State's water, and see that there are reasonable distributions.

SENATOR PETRIS: Suppose we repealed all the water protection laws. Wouldn't the Board have a duty to come forward and say, "Hey, wait a minute! You guys are going the wrong way. This is destructive of our mission, and it's a terrible detriment to the people of this State."

Wouldn't you feel compelled to say that?

MR. SAMANIEGO: Probably, but I don't think I would be compelled to then just demonstrate to you some path that you should then take to correct it.

SENATOR PETRIS: Just the path we shouldn't take.

MR. SAMANIEGO: I think that's more appropriate than directing you which path to take.

SENATOR PETRIS: Why the reluctance?

MR. SAMANIEGO: I think my concepts are that we follow legislative prerogatives that are already formulated, such as the Porter-Cologne law that governs much of our activity, the water rights law that has long been used to determine the distribution, equitable distribution, of water and their beneficial uses.

SENATOR PETRIS: But you're not judges. You're administrators, really.

MR. SAMANIEGO: Most of the time.

SENATOR PETRIS: You've got your quasi-judicial function from time to time, but I find this reluctance among a lot of the agencies, which puzzles me.

You're the guardians of a public trust, and you operate under certain statutes. If you have some horrible condition that exists which cannot be corrected except by legislation, you won't come forward and tell us.

Now, the Governor is a very serious person, and he is very careful about the appointments he makes. Now, I may disagree with his nominees from time to time, but he's trying to do a good job. So, he's trying to call on the best people to do the job.

What troubles me is, a lot of agency members see their job as so narrow that all they can do is read a statute and see if that statute is being interpreted and applied correctly, period. They lose sight of the big picture.

Your big picture is the health of the people. Water quality is not an item that simply helps agricultural production or cleans up the rivers so we can fish in them. The bottom line is health; isn't it? Especially with all more and more proliferating chemicals and so forth.

So, I don't understand why so many members are reluctant to blow the whistle and say to the Legislature, as the body that's entrusted with this responsibility, "We feel you should know certain things, and we feel you should know that the policy being recommended for you to go this way is totally detrimental to what we're trying to do."

Can't you say that? Do you think there's a statutory inhibition on that?

MR. SAMANIEGO: No, and I think in many cases we actually do that. We do that, though, in a nonconfrontive, nonlegislative-promoting manner.

SENATOR PETRIS: How do you accomplish that? Whisper in somebody's ear?

MR. SAMANIEGO: No, we recently delivered to you a rather major piece on the nitrate report to the Legislature.

SENATOR PETRIS: Right.

MR. SAMANIEGO: That describes the problem; it describes where it's at, and it describes several things that can be done to correct it, and even has a work plan with required PYs and budgetary requirements for us to pursue the issue to correction.

I suspect that over a year's time, there must be a half a dozen reports that we share -- not only share because we want to, but share because we are legislated to so do -- and we participate in 2021, which is pesticides to ground water; 1803, which is the contamination of wells. And that information is freely shared with the Legislature, which describes failures and, perhaps, also describes opportunities for correction.

SENATOR PETRIS: Let me ask you about Senator Ayala's bill that I asked the prior person, on the Auburn Dam.

He feels that it'll provide great benefit to the Delta, and beyond that, to subsequent users, but primarily clean up the Delta by providing this new flow.

The Board, I understand, has not taken a position on it. Is it contemplated that the Board will do something?

MR. SAMANIEGO: You mean take a position on it?

SENATOR PETRIS: Take a position on that?

MR. SAMANIEGO: We'll ultimately have to in that we will hear what the water rights issues of that appropriation, that diversion, and that use.

But with regards to how it's used, my initial impression is that that is a management decision for the Department of Water Resources.

Now, to the extent that it's made available for the beneficial use of the Bay, I think -- I think that is a good direction to take.

SENATOR PETRIS: Do you know whether the Board is going to put that on its agenda to study that bill and make some statement on it?

MR. SAMANIEGO: No, sir, I don't. I suspect -- we do an analysis on bills, and I suppose we will do an analysis on that.

SENATOR PETRIS: Thank you very much.

MR. SAMANIEGO: You're very welcome, sir.

CHAIRMAN ROBERTI: Thank you very much.

Are there any other questions of Mr. Samaniego? Is there any opposition in the audience?

Do I hear a motion?

SENATOR CRAVEN: Move Mr. Samaniego's nomination to the Floor.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Samaniego's nomination be recommended to the Floor.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello.

SENATOR MELLO: Aye.

SECRETARY WEBB: Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is five to nothing; confirmation is recommended to the Floor.

Congratulations.

MR. SAMANIEGO: Thank you very much.

(Thereupon the Rules Committee acted upon legislative agenda items.)

CHAIRMAN ROBERTI: Senator Torres is also here to introduce Mr. Joe Sandoval, who is our next appointment for hearing to the Youth and Adult Correctional Agency.

Senator Mello.

SENATOR MELLO: Mr. Chairman, I have to go up to the Health Committee, but keep the roll open.

CHAIRMAN ROBERTI: We shall do that, yes.

SENATOR TORRES: Mr. Chairman and Members, it's with great honor that I introduce to you the Governor's appointment to be the new Secretary. And I believe that many of you are well acquainted with his curricula vita.

I also felt it was important not only as he served with distinction as the Chief of our State Police, but also has been active, very active, in many community affairs throughout his career as a law enforcement officer in Los Angeles. His successes have been recognized by national magazines, and more than that, he's been awarded not only by his own peers, but also by many of us in the Hispanic community throughout the State of California, quite frankly, throughout the Southwest.

People know Joe Sandoval in terms of his expertise in law enforcement, but more than that, his integrity and his commitment to values which I know many, if not all, of these Members share. And particularly during the 1984 Olympics, Mr. Sandoval was the primary law enforcement commander of that Athletes' Village during the Olympics, and that, as you well know, is a tremendous responsibility not only in terms of security, but also having tried to be an international diplomat as well. I think that was part of his responsibilities as well.

He is well-versed in terms of his educational background, and quite frankly, he was the first Hispanic from the Los Angeles Police Department to attend the F.B.I. National Academy in Virginia.

He has a well-rounded law enforcement background, and obviously a well-rounded background in terms of service to his community.

I would like to highly recommend his approval by this Committee as the new Secretary of the Youth and Adult Correctional Agency.

CHAIRMAN ROBERTI: Yes, Mr. Sandoval.

MR. SANDOVAL: Yes, sir, Joseph Sandoval.

CHAIRMAN ROBERTI: We'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MR. SANDOVAL: Thank you, Senator Roberti.

Some of those facts were covered by Senator Torres.

I have been a law enforcement professional for approximately 34 years. Those years have provided me with a great diversity of experience in line and staff positions, supervisory and investigatory positions, and management and administrative positions, all with increasing levels of responsibility.

I left the Los Angeles Police Department as an Area Commander with 26 years of service. And as Senator Torres indicated, while with that Department, I did work the USC Olympic Village, which housed over 6,000 athletes from all over the world. I later served as the Chief of the California State Police for approximately 3½ years, and was also a member of the Prison Industries Board.

I am a hands-on administrator who believes in the concept of MBWA, Management By Walking Around, and in sharing information with those people that I deal with on a face-to-face basis. In that regard, I have visited over 20 institutions and camps since my appointment by the Governor last October.

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JOHN S. ODA, Commissioner
Workers' Compensation Appeals Board

SUSAN E. POOLE, Superintendent
California Institution for Women

VERNON D. SMITH, Superintendent
Chuckawalla State Prison

J. ALFRED RIDER, M.D., Member
Board of Medical Quality Assurance
Division of Licensing

MARC GRIMM, Former Program Manager
Board of Medical Quality Assurance

JOHN C. LUNGREN, M.D., Member
Board of Medical Quality Assurance

AUDREY MELIKIAN, Public Member
Board of Medical Quality Assurance

SENATOR AL SONG, Member
Board of Medical Quality Assurance

APPEARANCES (Continued)

SENATOR DIANE WATSON, Chair
Senate Committee on Health and Human Services

KEN WAGSTAFF, Executive Officer
Board of Medical Quality Assurance

SCOTT BRADLEY, M.D.
Foreign Medical School Graduate

LOURDES OLIVARES-AYCAOILI, M.D.
Foreign Medical School Graduate

ERNESTO J. PULETTI, M.D.
Foreign Medical School Graduate

ANDREAS TRAPALIS, M.D.
Foreign Medical School Graduate

LUIS BONILLA, M.D.
Foreign Medical School Graduate

R. F. FORESTI LORENTE, M.D.
Foreign Medical School Graduate

ALICE BREDER, M.D.
Foreign Medical School Graduate

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P R O C E E D I N G S

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CHAIRMAN ROBERTI: The next is, last week we had the appointment of J. Alfred Rider, Member of the Board of Medical Quality Assurance, Division of Licensing.

How many people are here to testify on Dr. Rider?

I think in fairness to the others, we might take them up first. I don't think they have quite as many witnesses, so they could, maybe, go home.

John S. Oda, Commissioner, Workers' Compensation Appeals Board.

Mr. Oda, we will ask you what we ask all the Governor's Appointees, why you feel you're qualified to assume this position?

MR. ODA: Well, Senator and Members, I feel that I'm qualified because of my 25 years in public service, 4½ months now with the Board, but prior to that, 2½ years on the Berkeley-Albany Municipal Court, and then 23 years with the Contra Costa County District Attorney's Office.

I feel that that experience, day by day, working with facts, applying law, and being fair and impartial, and the training I got there, and the judicial temperament that I have, makes me well qualified for a position such as this, which is quasi-judicial.

CHAIRMAN ROBERTI: Thank you, Mr. Oda.

Are there any questions of Mr. Oda? Senator Craven.

SENATOR CRAVEN: If you have none, Mr. Chairman, I would move Mr. Oda's nomination to the Floor.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Oda's nomination to the Floor.

I might ask you a question. I'm not going to let you off that easily.

There's a backlog in this area that's terribly severe. Do you have any proposals or programs, or does the Board have any, that you want to implement?

MR. ODA: Well the Board, being a judicial part of the workers' compensation field, feels that it's -- it's not that we feel, but it's the other side, the Administrative Director's position, he has the control over the Workers' Compensation Judges. That's where the backlog is, that I understand.

I've only been in it for 4½ months, so I'm only relaying what I've heard.

But as far as the Board itself goes, I don't believe we do have a backlog.

CHAIRMAN ROBERTI: Senator Petris, did you have a question?

SENATOR PETRIS: I wanted to move quickly, but Senator Craven beat me to the punch.

SENATOR CRAVEN: I'm sorry.

SENATOR PETRIS: It's all right.

He's from my district, and I'll second the nomination.

SENATOR CRAVEN: Well, it was Senator Petris who insisted that I do that.

(Laughter.)

CHAIRMAN ROBERTI: We only move here; we don't have seconds. We don't have as many Members as the Assembly does.

Is there any opposition to Mr. Oda's appointment?

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly. Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is three to zero; confirmation is recommendation is recommended to the Floor.

Congratulations.

MR. ODA: Thank you very much.

CHAIRMAN ROBERTI: Susan E. Poole, Superintendent of the California Institution for Women.

We'll ask you the same question we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MS. POOLE: Thank you, Mr. Chairman and Members.

It's my privilege to be here today and to be able to present my qualifications.

I've been employed by the California Department of Corrections since 1972. I've worked a variety of positions, both in custody in the institutions, and for the last approximately

nine years, in the headquarters office in Sacramento, where I've performed a variety of assignments, including the last three years as Assistant Deputy Director prior to assuming the position of Superintendent at the California Institution for Women.

In my assignment as Assistant Deputy Director, I was involved in policy influencing and policy development, as well as oversight for the operations of twelve of the existing institutions and their program monitoring and compliance.

For the last year, since March of 1988, I've been assigned as the acting Superintendent at CIW, and I think a review of operations at that facility today would reflect a considerable improvement in a number of areas. While I don't take full responsibility for that, I do claim responsibility for providing leadership and commitment in terms of increased compliance with policies, departmental policies, considerable effort to improve employee morale, an increase in the areas of investigations -- both staff and inmates investigations, and a variety of other program compliance areas.

I'm confident if allowed to remain in the position, that I will continue to bring the institution in line with departmental standards and to meet the expectations and goals set by the Department for this institution.

Thank you.

CHAIRMAN ROBERTI: Thank you very much.

What is the current inmate population at CIW? Is this reflected in your percent of design capacity?

MS. POOLE: Yes, it is.

I have approximately 2,348 inmates there today. Our design capacity is 1,026.

CHAIRMAN ROBERTI: That's over double.

MS. POOLE: That's correct.

CHAIRMAN ROBERTI: How long do the inmates stay?

(Laughter.)

CHAIRMAN ROBERTI: That's the wrong way to put that. What's the average length of service?

MS. POOLE: Probably 18 months.

CHAIRMAN ROBERTI: About 18 months?

MS. POOLE: That's correct.

CHAIRMAN ROBERTI: Are there any other alternatives, would you say, to incarceration where that time can be shortened, or do you think it's too short as it is?

MS. POOLE: I think that depends on the nature of the commitment offense. But we're doing very many things at this point to look at alternatives to persons who are currently incarcerated in terms of community-based programs, attempting to have the inmates participate more, and creating a positive return into society, and to devote some time to not only warehousing, but hopefully, reintegrating them successfully.

CHAIRMAN ROBERTI: Thank you.

Are there any other questions? Is there any opposition in the audience?

Is there a motion?

SENATOR CRAVEN: I am pleased to move --

CHAIRMAN ROBERTI: Senator Craven moves --

SENATOR CRAVEN: -- Ms. Poole's nomination to the Floor.

CHAIRMAN ROBERTI: -- Ms. Poole's nomination to the Floor.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly. Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is three to zero; confirmation is recommended to the Floor.

Congratulations.

MS. POOLE: Thank you.

(Thereupon the Committee acted upon legislative agenda items.)

CHAIRMAN ROBERTI: Vernon D. Smith, Superintendent, Chuckawalla Valley State Prison.

We will ask you the same question we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MR. SMITH: Yes, Mr. Chairman and Committee Members.

I started as a Correctional Officer in 1960, and since that time, during the last 28½ years, I've progressed up through the ranks custodially and the correctional casework field. And the last two years, I've been the -- the last year I've been the

Superintendent of Chuckawalla Valley State Prison. And the year and a half before that, I was the new Prison Manager and establishing a prison.

I've seen the prison from the desert, the bare desert, grow up into -- we're just about complete now. We've been open six months and have two units open.

CHAIRMAN ROBERTI: I didn't want to sound ignorant of one of our State prisons, but where is Chuckawalla?

(Laughter.)

MR. SMITH: Blythe, sir.

CHAIRMAN ROBERTI: Oh, it's near Blythe.

MR. SMITH: Yes, sir.

CHAIRMAN ROBERTI: So this is the prison we finally opened near Blythe.

MR. SMITH: Yes, sir.

CHAIRMAN ROBERTI: Very good.

How many inmates do you have?

MR. SMITH: Nine hundred and sixty, sir.

CHAIRMAN ROBERTI: What's the capacity?

MR. SMITH: With 968 as the capacity for the first two units. We still have two units to open.

CHAIRMAN ROBERTI: Is there any discussion or debate?

SENATOR CRAVEN: I move Mr. Smith's nomination to the Floor.

CHAIRMAN ROBERTI: Senator Craven moves Mr. Smith's nomination to the Floor.

Do you have air conditioning?

MR. SMITH: In my office, yes, sir.

(Laughter.)

CHAIRMAN ROBERTI: Is there any opposition?

SENATOR CRAVEN: Such frankness should be rewarded.

CHAIRMAN ROBERTI: I don't blame him. I wouldn't be able to survive without that.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly. Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is three to nothing; the confirmation is recommended to the Floor.

Good luck and congratulations.

MR. SMITH: Thank you very much.

CHAIRMAN ROBERTI: The next appointment is J. Alfred Rider, Member of the Board of Medical Quality Assurance, Division of Licensing.

Dr. Rider.

DR. RIDER: I felt you were going to ask for opposition.

CHAIRMAN ROBERTI: Yes, we are going to. Usually you stay here, because then if somebody is in opposition, you can answer the questions more easily if you're there. Sometimes it's uncomfortable, but you don't mind that.

Now, I think we're going to ask for opposition. We have one witness who is here, Marc Grimm.

Mr. Grimm, would you please testify.

MR. GRIMM: Yes, my name is Marc Grimm. I'm currently a State employee of the State Department of Employment and Development.

Previously, I was an employee of the Board of Medical Quality Assurance, Division of Licensing, State of California. I worked for the Board from approximately May of 1981 through February of 1987. During approximately four and a half years of that time, I was the Program Manager for the Division of Licensing for that Board, a body to which Dr. Rider was an appointee.

I'm here to testify under subpoena, to provide some information that, hopefully, this Committee can use to make a wise decision.

I'd like to preface my remarks by saying that the Board of Medical Quality Assurance has done a significant amount of good in my experience with the Board, and that began in 1981. It has had a very difficult job to do. In 1982, the State, as a matter of fact the nation, was confronted with medical fraud, an educational fraud issue, of sweeping proportions. New York State ended up arresting a very large number of inadequately or fraudulently trained or certified physicians who were actually operating in some of the inner-city hospitals and state institutions. The controversy grew, and eventually California was also embroiled in that.

In dealing with such sensitive issues, and in being concerned about the health and welfare of the public, the Board had to initiate some sweeping reforms and deal with very complex issues. And in dealing with those issues, the Board took a very hard line, and as the Program Manager, I followed the Board's instructions and also undertook a very hard line in dealing with applicants for licensure in this state, with the idea that if we make a mistake, as a staff person of the Board or as a Board member, that that mistake would always be in favor of the health and safety of the public.

The Board has the responsibility and authority to take that hard line, and for years it did just that. But exercising that authority must not be done in an arbitrary or capricious manner, nor can principles of equal protection and fair play be discarded to the dust bin of expediency.

While I was -- generally found Dr. Rider to be an affable and caring person, I think -- on an individual personal basis I liked him very much -- I unfortunately cannot support his confirmation to this Board given the history of actions and compromise of those principles that I've just enunciated.

I don't want to become involved in a personality assassination, nor do I in any way question Dr. Rider's medical competence. I don't wish to attack directly the competence and practice of the individuals who have dealt with the Board. I simply want to provide this body, this Committee, with some facts which bear directly upon the question of his fitness for nomination to sit on this Board.

I never fail to be amazed by how we water down responsibility when it comes down to review an appointment, or when it comes time to be addressed by the press or in the court, and yet, we focal -- focus responsibility and authority when somebody's taking credit for something. And I really fear that some of the things that happened in newspapers and some of the things that have been related to me indicate that we're viewing a process which is watering down responsibility.

What I want to do is talk specifically about Dr. Rider, not about peripheral issues, and then it's up to this body to make some sort of decision about this appointment.

I think that there's been some attempt to frame debate about Dr. Rider and even the appointment of some other members of the Board who have recently been confirmed as the benevolent M.D.s, appointed to the Board, trying to champion the cause of minority physicians or physicians who were trained abroad who are willing to practice in those places that the high-priced folks from Stanford, UCLA and other places, might not want to go.

I think I would like at this point to repeat a comment made by Dr. M.E. McAuliffe, President of the Division of Licensing a number of years ago, in a committee hearing in Palm Springs before Senator Montoya, when he said that it is not the place of the Board or the Governor of this state to relegate the poor or the minorities of this state or any state to second-class medical care on behalf of facilitating the entrance of foreign physicians, bilingual physicians, or bicultural physicians into society.

This is not really an argument between supporting foreign graduates or not supporting foreign graduates. In fact, I haven't been quite the Draconian figure that I've been made out to be. One of my early responsibilities with the Medical Board was addressing the question of just how bad are these foreign doctors. And as the head of the Bureau of Medical Statistics, I did a comprehensive study of 15 years' worth of data and ascertained that the foreign medical graduates practicing in California were actually subject to medical discipline and malpractice less frequently than their U.S.-trained counterparts. So, it has not been an attempt to keep the foreign medical graduate out or an ax to grind.

I'd like to touch on some very specific issues in the case of one Dr. Scott Bradley, because it's been raised in the press, it's been raised by members of the Senate staff, and provide some sort of an organization to my remarks, I would like to share my conclusions with respect to some documents which have been to provided to me by Committee staff and which I believe are before you.

The first document that I would like to address is a document that I think has been provided to you by staff. It's an analysis of the records of Dr. Scott Bradley, and how it was that he was declared educationally fit for practice under the current laws.

Section 2089 and 2089.5 of the Business and Professions Code, particularly .5, was added by the Statutes of 1985, Chapter 1178 by vote of this body, with great concern for the health and

safety of the public, but with also a certain measure of compassion for the foreign medical student and allowing them into practice when, in fact, they met some rudimentary, fundamental standards. And there was a great debate over how low or how high those standards should be set. Tremendous controversy and heavy lobbying. The Board and the Legislature supported those standards.

Now, in this first document there are some major issues that I think need to be addressed. First of all, the statute that I've referenced requires that an applicant for licensure have 72 total weeks of training which is formally defined as clinical training, clinical in nature. That means the individual has to have patient contact, has to be involved in clinical activities in a proper environment, proper kind of supervision and evaluation.

Looking at this document, provided by the State Medical Board itself, you'll find that the records show only 74.5 weeks of training of any type. Of these 74.5 weeks of clinical training, 35 of these weeks were from Dr. Bradley's third year as a medical student in Mexico.

The Division of Licensing in general, and Dr. Rider in particular, knew from competent testimony before the Division of Licensing of the Board of Medical Quality Assurance prior to licensing Dr. Bradley that the third year program at the Autonomous University of Guadalajara was not in any stretch of the imagination clinical in nature. This competent testimony came from Senior Associate Dean of the University of California

at Irvine, whose job it was to review Mexican medical schools with the idea of bringing some of those students back for special training in California universities. He called me after a return from a site visit to Mexico and informed me that that training was not clinical in any stretch of the imagination. And I invited him to testify before the Board, which he did in both closed and open sessions. He was unequivocal in his pronouncements with respect to that training. It was not clinical.

Also, three senior students from that same university were present at that meeting, and they were questioned at some length by members of the Division of Licensing. And under direct examination by the members of the Division, admitted unequivocally that they did not receive clinical training their third year, and that they participated in a large ranging number, a large variety, of outside activities at a variety of free clinics in the Guadalajara area, many times with absolutely no supervision by a trained, certified physician, yet alone a medical educator. There were no questions about the type of training.

On the basis of that testimony, literally hundreds of applicants for licensure from Mexico have been denied licensure when they needed that third year of training to meet the total statutory requirements.

The record will show that Dr. Bradley was licensed with a waiver of that information, basically sweeping it aside and saying, "Well, we're not really sure. And until we go down and

make a site visit, we're going to go ahead and license Dr. Bradley anyway."

I would point out that subsequent to the site visit, the Board has come back to its original position: it is not clinical training. And they are again denying licensure for individuals from Mexico who need credit from that point in time for licensure.

They're hiding behind a, quote, "new, available information," unquote, and it is patently untrue. And a close review of the formal minutes of the meeting of the Board of Medical Quality Assurance will provide conclusive evidence that the Board had full knowledge of the inadequacy of the clinical training for which Dr. Bradley was given credit, which is mandated by the statutory provisions passed by this body.

Next, the state requires -- the statute requires, rather, that one-half of the prescribed 72 weeks we were talking about consist of core clinical training. That's a very special type: concentrated, basic clinical training, which is the foundation upon which medical education is built. It has to be in five subject areas: Pediatrics; Surgery; Obstetrics and Gynecology as one area; General Medicine; and Psychiatry.

There are special classes, and the Board since 1983 has consistently demanded of applicants for licensure that those periods of instruction be contiguous periods of instruction, not fragmented, not under a variety of different supervisors, and that that training be done in a very special kind of setting: a fully functioning teaching hospital with all the checks and

balances and interactions with the university faculty and staff in place.

Now, for Medicine, one of those core areas, an applicant is required to have eight weeks. A review of this document, this document recently produced, I might add, by the Board of Medical Quality Assurance and recently provided to this body, shows that he was given credit for four courses which were not clinical, and were done in an environment which does not meet the requirements of the law with respect to a clinical training facility for core subjects.

Two of the courses for which he was given credit were actually completed in a subsequent year, at a completely different facility with absolutely no continuity in the training. So that eight weeks of concentrated progressive training is separated into two different years.

I will testify to you with competent authority and on the basis of recent review of over 500 applications to the Board that no other applicants are being licensed when they do not have continuity and do not have their training in Medicine in a facility which meets those basic requirements.

Either lack of continuity and poor training is good enough for everyone, and people are being denied due process in their applications for licensure, or the Board has intentionally erred in licensing Dr. Bradley with respect to his basic Medicine.

The statute which you passed requires eight weeks of Surgery, under the same stringent requirements as that required

in Medicine. Again, you will find by reviewing the official records of the Board that credit, to come up with eight weeks, was scavenged from three separate courses. They were not really clinical. They were not completed in the required setting. They were done in two periods, two years apart. No General Surgery requirement, which is stated in law, is found anywhere in the applicant's record for licensure. He has Urology, which is some surgery; he had Cardiology, which could have some surgery. But the law says eight weeks of contiguous General Surgery experience. I submit to you that it is not in the formal records submitted to this body by the Board.

This type of program has been rejected repeatedly in the past, and subsequent to the Bradley licensure continues to be rejected.

It's interesting to note that some part of Surgery was even taken from a course in Psychiatry, an absolutely unheard of principle.

In addition to the basic core training in these five subjects, an additional four weeks have to be done in one or more of those five subjects, to bring it to a total of 36 weeks.

The record shows that in terms of that four additional week requirement, Dr. Bradley has exactly one-half weeks in each of two courses out of the four.

I have assisted individuals in obtaining licensure before the Board, both as a Board staff person and as a private consultant, and I will submit to you that this would not be allowable in other circumstances. Hundreds of applicants have

been turned away, or worse yet, litigated against, for records with this educational quality being presented for licensure.

If this isn't an acceptable record of clinical credit, then I again state, either the protection of the public has been tossed to the wind, or there are a very large number of individuals out there right now suffering in court cases and without income, trying to obtain licensure in this state. It's not right either way. It's not an either/or. Either situation is unacceptable.

Now, I've heard it said that what we're trying to do is get doctors into practice in places where we need them. If the statute sets the minimum standard, how does one individual have the right, without going back to the Legislature, to waive, without any formal process, those basic requirements? And that's what we're talking about here today.

The second document I would like to bring to your attention is one which was also provided by Senate staff. It looks like this. It's a series of letters from hospitals in Southern California, and it concerns two in particular: Olive View Hospital, and Granada Hills. These are facilities where Dr. Bradley was given credit towards his total basic medical education requirements.

One of the requirements for a training hospital is that it's formally linked to the university sponsoring the program; otherwise, what are the standards? Who are the instructors? Do we know if the student really shows up? Does the training presented by the doctor at that remote facility in the United

States properly dovetail with the basic program which was originated in Mexico? Or, is that physician in California overlooking something, not being aware of what the curriculum should be?

One of the justifications for giving Dr. Bradley some credit for training at Olive View Hospital was the fact that there is a letter here showing there is an affiliation between this hospital and a U.S. university, California university. But a very large question remains with respect to the scope of the agreement. Was teaching going on in that facility in the precise subjects that Dr. Bradley was participating in? It's an unanswered question. And was the affiliation between Olive View and the university broad-based enough to support a claim that it was acceptable for training?

It is possible that it would, except that close to 150 individuals who have rotated through Olive View Hospital since 1982 have been denied licensure when they needed credit from Olive View to get a license, but Dr. Bradley was not treated the same.

The second is Granada Hills Hospital. He was given credit for teaching there -- training there. Granada Hills is not a teaching facility. And again, credit has been repeatedly denied other applicants, not one or two, but many for training that they've done there.

The way the record shows that Dr. Bradley was given credit was, he went to Granada Hills, but he was really farmed out to Olive View and other hospitals. Only Granada Hills had a

relationship with the host university, and it was tenuous at that. And in no case that I know of in the years I've had experience with the Board has the secondary farming out or affiliation been acceptable to the Board, and I will submit to you that as of today, I could fill this room with applicants for licensure who have trained in reasonably good hospitals that were secondary in terms of the affiliation with the primary university, where they have been denied license repeatedly.

The Board has actually gone to court to maintain this standard, and has gone so far as to charge fraud and other very serious criminal charges against applicants for licensure when they had rotated through this process, and it was not clear that in fact they had been farmed out.

You'll note in Dr. Bradley's initial application to the Board, that this farming out was not clearly delineated. It was only after two years of back and forth that the truth came out with respect to where he was actually at.

The third document provided by your staff that I would like to look at here briefly and comment on is a letter from the Autonomous University of Guadalajara.

One of the requirements for licensure of a graduate from a Mexican medical school in the United States and in California specifically is that they either go to a U.S. university and complete a special one-year program called the Fifth Pathway, or, failing that, that they meet the requirements for licensure in Mexico. And one of the requirements -- and that requirement is a Titulo, the title of doctor which is awarded. One of the many

steps in the process of earning a valid Titulo is completing a period of training called an Internado.

Now, in the letter from Guadalajara, an executive of the University states that the Internado, or ninth and tenth semesters, is a year of supervised clinical training that takes place after a student has completed two years of basic medical sciences and two years of acceptable clinical sciences.

The training or the period of time for which Dr. Bradley was given credit towards his Internado was for a period of time which he worked under the direct supervision of Dr. J. Alfred Rider in San Francisco.

Now, concerning the period of time in question, for three years that I had an association with Dr. Rider at the Medical Board, he maintained that activities in his office were research and not clinical in nature. That he used his office, certain research facilities which were never named, and Ralph K. Davies Hospital, but that in no case was the activity clinical.

Now, this is a very crucial point, as Dr. Rider at the time had absolutely no legal authority to have foreign medical clerks in clinical-type programs in the State of California, and that to do so was a violation of the Business and Professions Code, and was normally pursued by the State Medical Board as aiding and abetting the unlicensed practice of medicine.

For three years his representations were that he had no clinical clerks in his office or in the hospitals under his tutelage. His representations were an outgrowth of an inquiry of such activities, begun by BMQA in late 1983. The inquiry

produced evidence that in fact there may have been clerks in his office in San Francisco, and that they in fact were being engaged in clinical activities, and in fact it was in violation of the law.

But Dr. Rider defended himself by the denial that he was doing these activities. And this, coupled with the reluctance of the executive staff of the Board at the time to act against a former Board member and a person who at this time was a nominee to reappointment to the Board, resulted in the issue being closed. And it was closed so far as my staff were concerned. There was no clinical activity in San Francisco.

Now, when it became obvious that Dr. Bradley was being closely scrutinized and needed to meet his Mexican educational requirements -- to wit, the Internado among other items -- and that he was clinically deficient, it became imperative that he come up with some clinical training credit. At this point, Dr. Rider reversed himself and certified that the training was fully clinical in nature.

Now, based upon Dr. Rider's original representations of what Dr. Bradley did, I had a discussion with an official of the Autonomous University of Guadalajara and the president of their students' association, NASA, North American Students' Association. And with a description of the activities that Dr. Rider certified to the Board that Dr. Bradley was involved in, both officials indicated that it would not suffice as Internado credit. But when we needed the credit, and when we needed the Internado, Dr. Rider personally signed a BMQA Form

L5A, and addressed that to the Autonomous University of Guadalajara, and certified that in fact his training was clinical.

There are a large number of applicants from Mexico who continue to this day to be denied licensure on the very fact that the Board challenges the basis upon which the Internado was awarded. One could argue it doesn't make any difference; it's a silly Mexican federal requirement. Except for all these other cases where the Board challenges the individual to show, on a month-by-month, week-by-week basis, precisely what they did during the Internado period, and makes them get proper certification that it was in fact clinical; otherwise, they disregard the Internado, even though the Mexican government certifies that it has been sufficient met under Mexican law.

So, it's wrong either way. Either it's sufficient not to do clinical education, and it's sufficient not to have a valid Internado, or the health and safety of the public and the due process for other applicants have been tossed to the wind.

My daughter is studying fractions in school, and they're really confusing to her. She understands the numerator part: two of something, three of something, four of something. But the confusing part is the denominator: two-thirds; five-sevenths; sixteen-thirtyseconds. The denominator's the most important concept to know what the total is.

And the common denominator in the process in this case is J. Alfred Rider. That's the reference within which this must be framed.

During the period of time that Dr. Bradley's application was pending, a number of events took place which directly relate to Dr. Rider, not the other six, or seven, or eight members of the Board, but directly to Dr. Rider.

First, in trying to figure out precisely what was going on here, myself and my Assistant Program Manager, Edna Ong, repeatedly inquired of Dr. Rider as to his relationship to Dr. Bradley and what was going on. And for over three years, Dr. Rider denied any association with Dr. Bradley, other than he was in the program. And in fact, confided to both Ms. Ong and I that he wasn't even sure how Dr. Bradley found out that there was such a program in San Francisco that he could plug into.

We were to find out much later that this was not correct.

Secondly, Dr. Rider personally sat through several very intense sessions of the Credentialing Committee of the Division of Licensing, and meetings of the full Division of Licensing, where there were heated discussions and detailed reviews of the Bradley case, where again and again and again, the questions were posed out loud, "Where was Dr. Bradley? What was he doing during the time-frame in question?"

Dr. Rider knew the answers to those questions, because Dr. Bradley was in his office, and he never once volunteered the information. And in addition, not only did he withhold the information, he urged staff to pass the file through without getting answers to those specific questions, and urged staff to push it through on the basis of his providing excuses for why

Dr. Bradley probably couldn't come up with the information to document his whereabouts.

He knew from personal experience, not from hearsay. And yet, he never volunteered the information so that the other members of the Division and the staff could exercise their proper responsibilities.

Four, during this same time period, we were receiving numerous accounts of substandard medical education in Mexico, to include a complaint from the District Attorney for the County of Santa Cruz, State of California.

In addition, I had traveled to Mexico personally and viewed what was going on in several medical schools. And while it might be in some respects minimally qualifying, and there are a number of physicians who trained in Mexico who are preeminent in their field and they practice in the United States today, by and large, a strict application of statute for equivalency between Mexican education and the U.S. education wouldn't go. You couldn't make it. Even in the best of schools, which is probably Guadalajara, experts in the field will tell you they're really not comparable.

While we're looking at this problem, and before staff discovers that in fact, first, Dr. Bradley had been with Dr. Rider during the period in question, and that there was a relationship between the two, a number of events happened. On three occasions, Dr. Rider and Mr. Wagstaff, the Executive Director of the Board, pulled the discussion of the educational standards in Mexico and my request for a review and investigation

of these circumstances from the drafted agendas of meetings of the Division of Licensing, where these issues should have been properly discussed and decisions made with respect to investigations and inquiries. Three separate occasions.

B, I was personally threatened with disciplinary action should I continue in my attempts to communicate in writing my concerns about the quality of education in Mexico to member of the Division of Licensing. And in fact, I was directly ordered not to submit such documents to them, either as part of the Board's packets, or by mailing to them personally. It was only in February of 1987, when I left the Board, that I left the draft copy with one of the members to read.

Third, Dr. Rider repudiated, without compelling evidence, direct testimony from competent authority about the quality of the education and whether or not it met minimum standards in California. It was an arbitrary decision.

And fifth [sic], and this goes, I guess, a little to what Mr. Zelman testified about -- I believe I have his name correctly -- when he was talking about some of the things that happened. While Dr. Rider was a senior member of the Division of Licensing, a decision was made to repudiate or to nullify formal written agreements made with applicants for licensure who were found deficient, but in many cases had a better fundamental education than Dr. Bradley, and were told to go out and do remedial studies. They had in good faith spent the money, absented themselves from residencies and from practice, gone out and completed the specific training required for in a written

document signed off by the President of the Division. And they then cancelled those agreements. And all of those people were disenfranchised for licensure. Some have left in despair. Others are in court today. Some are out struggling, still without employment.

So, the argument that someone here is a champion of the downtrodden foreign-trained physician doesn't fly. The agreements entered into in good faith, in writing, by individuals with applications pending before the Board, but the trick is, you see, the Board doesn't have to worry about detrimental reliance. The Attorney General's interpretation of the law is, well, as things change, things change.

The Board doesn't have to do it that way, but they probably have the latitude to do it, and they have exercised that judgment while Dr. Rider was the President of the Division of Licensing.

CHAIRMAN ROBERTI: We're going to take a ten-minute break.

(Thereupon a brief recess was taken.)

CHAIRMAN ROBERTI: The meeting will come to order.

We're on the confirmation of Dr. J. Alfred Rider, and Mr. Grimm was testifying.

MR. GRIMM: First, allow me to apologize for being so long. I know these Committee hearings are not really designed for this, but it's a very complicated subject.

I'll try to summarize. I've actually excluded a significant amount of material I have with me, and will try to get to the bottom line here.

This is not an argument or discussion about whether foreign medical graduates provide a valuable service to the United States in the field of medicine. It's about fairness, and it's about an individual's judgment.

While Dr. Bradley was licensed, clearly by the documents provided by the Medical Board as of April the 24th, 1989, which does not show that he met the minimum requirements, while that is taking place, I can give you from personal experience an example of a young lady who went to medical school in Puerto Rico, a medical school that is in a commonwealth protectorate of the United States, a school that's applied for a liaison committee on medical education accreditation in the United States, a school which is under the tutelage of a major Canadian medical school, recognized in the United States, developing their program and doing a good job, who did her two years of basic science training in Puerto Rico, and then went to New York State and did all of her clinical training at New York University Teaching Hospital under a direct contract between the University and Puerto Rico, and the Regents of the State of New York and the medical schools, who was board-certified with six years of postgraduate training, who's been denied licensure and offered the only alternative as litigating against the Board. That's really what we're talking about. That's a real case.

If there's no fire where we have smoke, and I pose two questions: number one, why has the Board work so hard for over two years to deny any access to the records of the Bradley hearing proceeding? Why did the Attorney General representing

them argue vociferously in court that the Bradley case has no precedent, no bearing, and it's irrelevant and shouldn't be brought up, and if it is, it doesn't matter anyway, it was a mistake. And these things have actually happened.

Skipping down, I think that we can go past a lot of this information here. One the chance that you might have some questions you want to ask, let me just close this way.

Some of what Mr. Zelman related was hyperbola. I know; I was there. I know his fiancee or wife, as it is, and her troubles with licensure.

Some of the complaints of the Vietnamese community are not well based, but many of them are.

But we have a system here where there are very few, if any, statutory constructs which mandate or provide for an administrative process, in this case, that protect the right of an applicant for licensure. Virtually nil.

The public agency bears almost no burden of proof, and that's by statute. It can legally deal in secret on these cases. It can withhold pertinent information from an applicant and from the public in general that bears on cases, both in court and out. It can deal with cases on an individual case-by-case basis with little fear or regard for principles of equal protection and fair play. It's not unique to the Medical Board. A lot of regulatory boards have those kinds of powers.

Much of this sweeping power, this latitude, is granted to these agencies, and they're allowed, in the interest of protecting the health and safety of the public of the State,

which is a higher good, though it is kind of a lopsided David and Goliath battle. Only half the time, David, the applicant, doesn't have a stone or a sling. But it's designed that way.

What worries me is that the actions of the Board in general, and Dr. Rider specifically with respect to this case, and the activities of the staff, some of whom report to me they were coerced into following along, and others who willingly complied, convinced me that the right of the public to protection from inadequate, substandard, or dangerous medical care at the hands of an undertrained, unskilled physician have also been seriously undermined.

So, what we've granted them latitude toward has been thrown out. Because, when you get to the bottom line in some cases, all you really need to know is the right person.

The agency, as I said at the beginning of my comments, has accomplished a lot since 1982, with tremendous cost and time and energy and emotional investment by members appointed, nominated and appointed by the Governor and by the Legislature.

But what you need to understand is, this system has worked simply on the basis of the integrity and devotion and sense of fair play that each appointee brings to that organization, not because it's designed that way.

Until such time as this body sees fit to restructure the California State Medical Board, particularly with respect to licensing, and build in full public disclosure, safeguards, open meetings, lists of precedent-type decisions, without embarrassing an individual by attaching their name to it, until that time,

each and every appointment to this Board is incredibly important. It's not something to be passed off because you're sitting on a committee, and of course, the rules are the rules, and it operates that way anyway, because that's not the case. There's far too much latitude in it.

There are between 40 and 55,000 physicians in the State of California, depending on when you count and how you count; active and inactive, and so forth. Virtually all of these 45-50,000 people are eligible for appointment to this Board. And given the history of this case, and many other issues which we don't have time to go into, I would encourage this Board to make another choice.

That ends my comments.

CHAIRMAN ROBERTI: Senator Petris.

SENATOR PETRIS: I'm just interested in the latter part of your statement regarding changes you think ought to be made.

I think it would be helpful if you could send us a letter to Senator Roberti making some recommendations on what we should be doing to improve the whole system, the structure, and so forth.

MR. GRIMM: I'd be happy to do it. It certainly won't be a perfect solution, because it's a terribly complicated issue, but there are some improvements.

SENATOR PETRIS: You're convinced it could be improved.

MR. GRIMM: Definitely.

SENATOR PETRIS: To the extent that you can make the recommendations, it would be helpful.

MR. GRIMM: I certainly will.

SENATOR PETRIS: Thank you.

CHAIRMAN ROBERTI: Senator Craven.

SENATOR CRAVEN: Mr. Grimm, as I recall your opening remarks, you are a State employee today; are you?

MR. GRIMM: Yes, I am.

SENATOR CRAVEN: But there was a period of time when you operated a business of your own?

MR. GRIMM: I operated a business on my own, and I'm in the process, since January of this year, of closing that business slowly over a period of time.

SENATOR CRAVEN: Was the nature of the business the representation of people applying for licensure?

MR. GRIMM: Yes, it was.

SENATOR CRAVEN: Where did you get your clientele?

MR. GRIMM: From a variety of sources. A lot of the clientele, approximately somewhere between 60 and 75 percent, were individuals who were, either through advertising, saw that there was an opportunity to have their records pre-reviewed and get some assistance, and through personal referral from one individual to another.

Of the remaining 30-25 percent, depending, and it's totally hard to count, some of those were individuals who knew me while I was at the Board and had license applications pending at the time. And in that mix, there'd be others whom I really had no personal knowledge of but were in some way applying.

SENATOR CRAVEN: So, at least to the degree of 30 percent, your affiliation with the Board produced some degree of clients for you?

MR. GRIMM: Well, well below that. I think the last time the Board went through and reviewed records was just within the last month to see which individuals fit into the time-frame. They provided me with what they thought was a pretty complete list. They would have one more section to add, which listed 17 names.

So, out of about 500 and some odd people, about 17 fall into that category, yes, that's correct.

SENATOR CRAVEN: Very well.

How long were you with the Board?

MR. GRIMM: As I said, I believe from May of '81 through February of '87, approximately.

SENATOR CRAVEN: So, you were really there during the period of time when some of these things, which you have delineated, took place?

MR. GRIMM: Oh, yes, definitely.

SENATOR CRAVEN: What action did you take, recognizing what you interpreted to be something that was wrong? What did you do about it at the time?

MR. GRIMM: Are we talking about the events I've testified to?

SENATOR CRAVEN: Yes, sir.

MR. GRIMM: I spent many, many hours with the staff of the Attorney General's Office, sometimes at their insistence

rather than mine. We were counseled very actively by the AG representatives that the involvement of Dr. Rider in this case was inappropriate.

And we were encouraged, directed, cajoled to try to remove him from the environment in terms of dealing with medical licensure issues, particularly with respect to this case.

I made numerous verbal complaints, and had numerous discussions with Mr. Stephen Wilford, the former Assistant Executive Director of the Board, and Mr. Wagstaff and I on numerous occasions had reason to discuss this issue. We discussed it in everything from a closed-door environment to the Executive Officer's office, the hallways of hotels while meetings were going on.

SENATOR CRAVEN: With the discussions that you had or that were held involving the Attorney General's Office, they at no time issued what I will call a nonjudicial reproof to Dr. Rider; did they?

MR. GRIMM: Well, if they did, it was confidential in the sense that I never saw a written decision.

I know that the one DAG that we dealt with most particularly was very upset about it. She expressed her frustration at being, in effect, the Board's attorney, and yet a representative of the Attorney General's Office, and there was a divided loyalty there in terms of client-attorney privilege and what she could actually do.

I think her approach was, and her last comment to me was that if there was litigation resulting form this, that it would

be her recommendation that the State not represent the Board on this issue.

SENATOR CRAVEN: The Board has a member ex-officio counsel; do they not? An ex-officio member of the Board. In other words, they serve with the Board, I presume, on issues of Board activity.

MR. GRIMM: They have a variety of sources for legal input.

The Board has its own in-house attorney, who deals primarily with medical discipline issues, not so much licensure.

They have an attorney staff member of the Department of Consumer Affairs who provides advisory information to them. And I don't know if Mr. Gorges has more than one assignment. I think he's pretty heavily involved with the Board. I guess some of the Allied Health committees, so he's a part-time attorney.

SENATOR CRAVEN: After long and obviously dedicated service, what caused you to leave the program or the Board?

MR. GRIMM: A number of things.

First of all, the fatigue of constant litigation that the Board was involved in. As the Program Manager, I was the focal point for a lot of the testimony and the depositions and the preparation for cases, and it drug on for over a period of three years, consuming nights, weekends. A tremendous amount of emotional and physical energy in order to do that, and it became very wearing and tearing on the family.

In addition, I was dissatisfied with the ongoing battle between Dr. Rider, Mr. Wagstaff and myself over what we were

going to do with this issue. I mean, it became one of the central items to be dealt with. Were we going to stick to a process of following precedent, or were we going to decide cases on a willy-nilly, one-by-one basis? And there was a tremendous amount of pressure, back and forth, between the Executive, the members of the Board, and members of the staff as to which direction we were going.

I was caught in the middle on that. My Assistant Executive at the program there, and the lion's share of my staff, believed that precedent cases had been established, and that the law had been pretty well interpreted, sometimes through court decisions and sometimes just de facto through the operation of the Board, and that we were getting this mandate to make a major departure from what they saw as legally appropriate.

I'm answerable, or was answerable, to Mr. Wagstaff and to the members of the Board. And I'm caught between the two as to which direction we're going to go. So, that was another major consideration.

SENATOR CRAVEN: Had either members of the Board or Mr. Wagstaff ever suggested that perhaps you seek other employment?

MR. GRIMM: Sure, about the time that Dr. Rider became frustrated over the problem with the Mexican medical cases. The more pointed that issued became, the more critical the relationship became.

But, you know, it's interesting that you bring that up. I'd say that Mr. Wagstaff happened to have sat on a Board of

Review for State promotion where he was pretty much instrumental in placing me on the promotion list as a Staff Services Manager III during this time, so obviously my service wasn't that bad.

The big problem was with Dr. Rider and the idea that staff was starting to get in the way on some issues with what a Board member would want to do. There was certainly disagreements.

One of my jobs, to keep the agency out of court so that it could do its work, was to say, "All right, Dr. Rider and Mr. Wagstaff, the assembled members of the Division, you now want to let Dr. X get a license, and here's his circumstances. You need to know that Dr. X did different from the 100 Dr. Ys that come before him. And if you make this decision, you exercise some sort of discretion, you denied these, and now you're going to grant Dr. X. What do you want to do?"

So, I always posed the hard question, "Are you going to reverse yourself?" Because, we really don't have a written history of the Board. We really don't have documentation per se of those decisions. So, to maintain continuity and fairness, staff would keep a running tab on what kinds of things were considered acceptable by the Board and what kind of things were not. And so, we tried to maintain continuity.

SENATOR CRAVEN: As an experienced staff person, do you feel that it is unusual that the staff feels one way and the people who are the judgmental body feel another?

MR. GRIMM: Not at all. But I think you have to really measure my answer in terms of the importance of the issues being discussed, and whether there's statute and legal precedence to complicate the issue.

And I think you certainly have to look at the fact that during that time-frame, the issues we're talking about here today were being litigated against in court, creating a record against physicians with similar backgrounds. That's the dichotomy staff and management was faced with by this kind of a move, this direction.

We didn't withdraw all those cases from the court. We didn't drop charges against all of those people. We never licensed any of those individuals. And that's the dichotomy.

So certainly, management and those in power, legislative staff and State Senators, I suppose, will often be at odds on an issue.

SENATOR CRAVEN: Are you an attorney?

MR. GRIMM: No.

SENATOR CRAVEN: Do you know for certain that at all times the Board had available to them counsel?

MR. GRIMM: Well, actually, I've been told that's not quite the case. In fact, when this decision was being pushed the hardest, the Attorney General was disinvited to a meeting, as was the Deputy Program Manager who had been most instrumental in working this case up.

So, they were always available, but they were not always consulted. And there were many times, of course, when an attorney gave an opinion, and the Board said no.

SENATOR CRAVEN: Does Board counsel know in a current way what activity is going through the Board and what deliberations they're involved with?

MR. GRIMM: Not all of them. Mr. Gorges, for instance, would have to rotate between disciplinary hearings and meetings of the Board of Medical Quality -- or the Division of Medical Quality [sic], and what was going on in the closed session meetings of the Division of Licensing. Sometimes he would be there for the entire meeting; sometimes not. It was very uneven.

We also went through a real traumatic transition. We started out with Mr. Gorges and his view on how things should be done. We then, because of the heavy litigation, went through two or three DAGs. They basically pushed Mr. Gorges out, and they came in with their opinions on how things should be done; a much stricter interpretation, I might add, because they were litigating, and they had to worry about things like equal protection and so forth.

And then, the Bradley issue as it reached its terminus, we substitute out the DAG and we substitute back in Mr. Gorges. So, at the same time, you're turning over Division members. Bringing in new people who don't have the history of the site visits to the Caribbean, of the civil rights litigation, of federal court suits, of how we decided cases, of the written agreements we entered into with applicants.

It was a time of significant turmoil.

SENATOR CRAVEN: The cases to which you've referred, some of those may have been an outgrowth of med. students or med.

graduates from Southeast Asia that you said before, they have a point, but not necessarily the winning point; is that correct?

MR. GRIMM: That's not foremost in my mind. I'm thinking more of the Caribbean, Mexican, Iran, Soviet Union, that group.

The Vietnamese case, it's really complicated. This law suit seems to drag on forever. It's a very unique, a very special kind of case involving a very unique group of people.

SENATOR CRAVEN: Yes.

MR. GRIMM: It's a much harder one to call because, in fact, they were at their school the whole time. They weren't in Southern California, going from nonteaching hospital, to facility, to doctor's office, and back. So, that would lend more credibility to their case.

And then, on the other hand, the Board had all these, I think, valid worries over what was going on there.

So, I don't think the Vietnamese case really falls into the same category.

SENATOR CRAVEN: You detailed so much of the past history of one physician, whom I presume is in practice today?

MR. GRIMM: Yes.

SENATOR CRAVEN: Who you felt was licensed without proper credentialing.

And let us just assume that there may have been one or two others. But with the volume of people that you ascertain are qualified, as opposed to those that are rejected, isn't that really a very small, somewhat minute percentage, all things being considered?

MR. GRIMM: Well, again, you can't answer that yes or no, Senator, and here's why.

The Board was holding the line on, among other cases, the Vietnamese issue. And I think there were good arguments on both sides, and I probably am closer to the Board's position than I would be to the Vietnamese position. Certainly, I would have never condoned the idea of licensing all of them. Certainly there were some that were pretty qualified, but, you know, I wasn't happy with the legislative solution, any more than the Board was.

But here's the problem. The Board is holding the line. It's trying to enforce the law strictly, but that's what the law said. No one had the political power, the clout,nobody lobbied the Senate or Assembly to change the law's inequities. It doesn't always result in the most qualified physicians; it doesn't always result in the least qualified, but that's the law.

And the Board was able to continue doing business only so long as it could keep to the business of reviewing records, visiting medical schools, and administratively processing files. If anything happened which threw the Board, the Division, into federal or State Superior Court on issues like equal protection and due process, you couldn't do your job, and what you ended up with is, nobody gets licensed during the litigation.

There were several suits pending during the time that the Bradley issue was dealt with and ultimately resolved. The minute the Bradley decision was made, it opened Pandora's Box for any number of attorneys to make a pretty damn legitimate claim their clients didn't get the same breaks.

The lady from Puerto Rico, immanently qualified. There's a woman from Arizona State who taught at UCLA, cannot get a license in California, God knows why.

So, you end up in court with all these attorneys filing a rash of cases at all different levels, costing hundreds and hundreds of thousands of dollars, and the Board stops. And aside from the issue of whether it's fair or not, it makes the public agency a target, and it can't do its job any more, and what you get when it stops doing its job is a backlash of special interest legislation. Some of it's good; some of it's bad. I think sometimes it's the only alternative. There's no way out of it. The Board legally can't back out; the applicant can't come up with what the Board wants, and I think the Legislature steps in, exercises a judgment, and imposes a mandated wisdom to the process and we resolve the problem.

So, it's not necessarily a bad thing, but it sets the Board up for not being able to do a good job. It brings into question every single applicant that comes down the line afterwards if they're not just given a red carpet treatment through the process.

That's the real problem with even one of these, and it wasn't the only one.

SENATOR CRAVEN: Let me just wind up and ask you one other question.

I have to feel that the counsel should have been aware of basically what's going on. By virtue of your testimony, I discern that counsel in more than one occasion agreed with your

point of view and almost was willing to stipulate the correctness of the attitude which you have held.

And then, you said that -- and I asked why didn't they do something if they found that something was wrong, illegal, or irregular, or whatever adjective you wish to use to describe it -- and you said that basically they were intimidated or coerced. I think that those were two words that you used.

MR. GRIMM: No, not the attorneys. The attorneys weren't intimidated or coerced.

The attorneys -- I'm speaking now of the Deputy Attorney General, confided to me a genuine sense of conflict because the DAG is at once the attorney representing the Board, and if there's litigation then that attorney also represents individuals of the Board as well as the staff.

SENATOR CRAVEN: Oh, yes, I understand.

MR. GRIMM: There's an alliance there, and then there's this other question of what do you do when you see things not working well? And that attorney worked very, very, very hard for many, many months to keep this action from being completed.

That attorney then was moved out of the picture, for all intents and purposes, and Mr. Gorges comes back on the scene, according to Ms. Edna Ong, the acting Program Manager at the time.

Now, could the Board decide to use training all split up in little pieces, like this documents shows? The law doesn't say anything about contiguous training; although, the Board now is trying to sponsor legislation that specifically requires it.

However, since 1984, with this exception, the Board said the standard is the American medical school standard, and the American medical school standard says contiguous; therefore, all applicants were held to the contiguous standards.

So, what they did is, saying, "Well, all right, we really want to get this guy licensed now. Since contiguous really isn't in there, let's add it all together and see if it look good enough."

That's the problem.

SENATOR CRAVEN: Does not the Board have the policy or the prerogative of policy? In other words, they can set policy as they choose, as long as they don't violate the statute or --

MR. GRIMM: Well, it depends on what you're talking about.

The Board was rapped very heavily by Members of this body, and by the people responsible for promulgation of regulations in California. And they basically say that the policy authority of the Board is dramatically limited without regulations. And the Board spent four years getting beat up.

So, yes, they can set policy, but if they're going to set a policy that's a major departure from what they're doing, then that -- that calls for a public hearing. It calls for a Notice of Intended Action. It calls for a process.

And what we have here is one gentleman deciding that what's in the code is not wise in a case.

SENATOR CRAVEN: Well, with all of those safeguards that you've enumerated, it just seems rather strange to me that

counsel did not inject themselves into this milieu and say, "This is what you may do or may not do."

MR. GRIMM: Up until the point I left the Board, they did exactly that. They said the individual is not qualified, period. there was no equivocation.

SENATOR CRAVEN: I see. In other words, counsel said that that was the case.

MR. GRIMM: They are not qualified.

And if you look back through the actual file, before all the documents were purged out of it, you'll see repeated views. You can look and see who was at the meeting when the reviews were done, and each time it resulted in a denial.

Now, the Board at some point would have the flexibility to change the rule. There's a lot of latitude, as I stipulated.

SENATOR CRAVEN: That's the problem.

MR. GRIMM: But you don't do it on an individual basis. That's not the law.

And every time in my experience with the Board we tried to do that, we ended up in court, or before the State Legislature, making explanations for what we were up to.

That's not what happened in this case.

SENATOR CRAVEN: I thank you very much, Mr. Grimm.

MR. GRIMM: Thank you.

CHAIRMAN ROBERTI: Mr. Grimm, would you feel that Dr. Bradley was qualified to be licensed?

MR. GRIMM: If you are asking me is Dr. Bradley a competent physician to practice medicine, which is a different

question, I would say I would want to defer to those people who have worked with him in a peer review, who are trained physicians, to make that judgment, and defer to the fact that at some point, he finally passed his written examinations. That's got to count.

So, he may be doing a very good job of practicing. And his oral, too. For whatever that's worth, he took both exams, and I'll stipulate to that.

Does he statutorily qualify for licensure, and the answer is clearly no. So, get him a one-man bill, or change the law. Or, if you want to operate by policy and not bother with these other formalities, then by God, what are you holding up these other several hundred applications for? Why are you sending these people out, week after week, month after month, searching for documents that they're never going to find? Why are you pushing them to make a certification that, "Yeah, I did that," when all it is is a trap, and you nail them the next week in court, "No, you didn't do that."

You push them long enough, and "Oh, yeah, my Psychiatry was contiguous." You find out, well, it wasn't really.

Change the system. Do it in the lawful way that the Constitution of the State calls for doing it, or follow the rules. That's what you've got to do.

And without a structure to insist upon this process and to make sure about safeguards where people can see records and can know the basis for a decision, it's not fair; it's not American.

Now, Dr. Rider's view of how to put this medical education together, while not statutorily correct, it's possible that somehow Dr. Bradley gleaned all the requisite experiences somehow out of that process. But that's not what's called for in the law.

I'm not here to tell you that Dr. Bradley can't practice medicine. I don't know that.

What I can tell you, though, is there are many, many people far more qualified to practice medicine who can't get a license to save their soul in this state right now. And if they try to push the issue, they do so at their own peril, because when they do go to hearing, everything including the kitchen sink is thrown into the statement of charges. And as Mr. Zelman explained to you during the opening of this hearing, they throw in everything from, "Your records don't look right," to, "You're a felony fraud," to, "False and misleading application," "We don't like your surgery, your biology, your anatomy." They go down the laundry list.

They go into court, and if the ALJ in the hearing says there's no substantiation of the Board's claims, and throws out all of those, the Board turns around and rejects the decision of the ALJ and writes their own decision. And again denies -- and here's the important thing -- they deny, and then drop out all findings that the judge made that these weren't supported; the person didn't commit fraud, or they didn't lie.

So what happens is, the original filings are public record, and the final decision, which still says "Denied" is a

public record, but there's nothing in the current public record that says, "In an impartial tribunal, this person was found not guilty on all of those." And that record haunts them from hospital to hospital, state to state. And they may get their California license in the end, but it's not worth anything. They're doing contract emergency room work somewhere in Los Banos, and I've got an example I can show you of that.

That's what's wrong with the process. And that's why how these members are going to deal with each of these important issues is crucial.

It's not that I hate Dr. Rider. We disagree on a hell of a lot of things. Some of them, I think, violently. But Dr. Rider's not a bad person. We just have real bad judgment, and it results in undermining the institution, and it undermines the protection of the public. And I think that's why the law allowed so much latitude, was so that the agency could od that job, not so that it could abuse that discretion.

CHAIRMAN ROBERTI: Did Dr. Rider ever pressure the staff or lobby?

MR. GRIMM: Constantly.

CHAIRMAN ROBERTI: On the Bradley application?

MR. GRIMM: On the Bradley application.

And whenever we came to a point where we were going to try to deal with Mexico in general, which would have negatively impacted on the Bradley case, we were also called to task.

My assistant and I were summoned all the way to San Francisco on about 30 minutes' notice and ordered to bring every

single Mexican medical file in the office in. And we drove to Parnassus Avenue and sat in his office and again explained why we couldn't do what was being requested.

There was constant, constant pressure on the staff to let it go through, to waive it, to not be concerned with issues. Stop requesting data. Stop writing letters. Leave it alone. Leave alone Mexico, leave alone Dr. Bradley.

And unfortunately, a lot of the staff to this point still feel very intimidated and can't come here to tell you that today, but I will represent to you that they've told me that. I think you can confirm that with your staff.

DR. RIDER: May I respond?

CHAIRMAN ROBERTI: Before you respond, I am a little concerned, Dr. Rider, that listening to the case of Dr. Bradley, and then the case that Mr. Zelman spoke to, which, although he hasn't said, I take it is either his wife or his fiancee, she seemed to have been run through every hoop, even some hoops that the court eventually threw out. In fact, if I recollect correctly, criminal charges were brought against here, accusations. And I don't think I'm incorrect on that, and fraud.

And yet, with Dr. Bradley, his pathway seems to have been cleared a bit.

DR. RIDER: I'd like to respond.

CHAIRMAN ROBERTI: Please, I want you to respond to that point.

DR. RIDER: All right.

First of all, I'd like to say that Marc Grimm was the Program Manager before I got on the Board. Marc Grimm caused us more problems, more litigation.

He sits here now and tells you of all this litigation against the Board. He is the one that caused it! He has caused more problems because, as you can see from his testimony, he is -- he sees things in a very small way, minutia. He can't see the overall picture of things.

He has denied as the Program Manager -- many people never came before the Board. As Program Manager, he has the right to tell people that their credentials don't apply. And that's what he did over and over and over again.

He was asked to be transferred to another division. He came out of the Computer Division. He is very articulate. I think he's a good computer operator. I do not believe that he is the kind of person that can deal with humans.

I'll give you an example of one letter he wrote a person. I was shocked at this. He wrote the letter:

"Dear Mr. So-and-So:"

Here's an M.D.,

"Dear Mr. So-and-So:

"We're very sorry that your credentials don't meet the require ments for the California State Licensing Division, but we wish you the very best in any other endeavor you might want to under- take."

Now, I said, "Marc, you can't do that! You've got to tell the person why he doesn't qualify. What can be done to help him qualify, whatever."

I could go over this 50 places where he has lied today. Either his memory is faulty, or he has such a dislike for me, because he perceived me as being President of the Division for two years, that's all. The President of the Division doesn't make the decisions himself. There are seven members of the Division at all times.

We are counseled by counsel. There never was a meeting without a council, a lawyer being there that represented the Board.

I'd like to explain out some things. He has testified in depositions, and he has perjured himself over and over again. He's very articulate, and it's easy for you to believe him. But you let him talk long enough, you find he comes back and he makes faulty statements. And he has innuendoes, for example, saying that Bradley worked in my office. He never worked in my office.

He's made a statement that I had an unwarranted research program on at 800 Parnassus. There is no 800 Parnassus. I didn't have any research going on at 800 Parnassus. Bradley never worked in the research program out of Parnassus.

I like this statement here. This is from -- now, I'm sorry that the attorney -- we asked the Attorney General to be here to answer to any of these questions, because there's litigation pending. But I have a copy of a transcript. He said, listen to this:

"Michael Canon was of government practice. What is that called? It's called Little Hoover.

A. He was an analyst who was formerly employed there. He called us during 1986 to tell them to be careful, that Dr. Rider was implicated in a Medi-Cal fraud scam that they had discovered while investigating, I believe, nursing homes in the South Bay Area. The services that were being charged for that were not delivered and, in all likelihood, were charges brought against Dr. Rider.

Q. Did that involve South Peninsula Hospital?

A. Yes.

Q. Was it that care was billed that were not performed?

A. That's what he said. I don't know.

Q. Was that the only Medi-Cal investigation you ever heard of Dr. Rider?

A. No, I heard of another one years ago involving the University of San Francisco involving too many conflicts, and so forth."

And then, another place, then Mr. Wheaton, attorney, says:

"I think he has just perjured himself."

Now, here's another thing here. Here's a deposition here that was -- the statement was filed, a brief, against Zolman. And here is what the attorney, the Board attorney, who represents Mr. Grimm, was extensively impeached with his prior testimony from his deposition, Zolman civil suit, and from the Delafield Statement of Issues hearing as follows:

"One, four months postgraduate general medicine required, impeached. Zolman deposition.

"Two, Board's lack of knowledge of accelerated Juarez Program, impeached. Delafield hearing."

I can go on.

"Division members did not review Juarez. Delafield hearing, impeached.

"Division members were unaware. Delafield, impeached.

"Inappropriate, unapproved method of operation of Richard B. Walt. Zolman deposition, impeached.

"Texas disapproved Eastwood training. Zolman deposition, impeached.

"Titular required by Division. Titular Hearing, impeached.

"Eastwood is unacceptable training environment. Zolman deposition, impeached.

"Division required Miami graduates to complete an additional year prior to passing inspection, 285, Delafield hearing, impeached.

"Difference between Juarez and Miami in faculty admissions and clinical training. Delafield hearing, impeached.

"Zolman training was preset tribunal portion. Zolman deposition, impeached."

I could go on with those. We have volumes and volumes of things that this man has come up and tried to impugn: the University of Guadalajara, the training program there. He's tried to say that I was in charge of all this program.

And if you would believe what he has said, you would think that we had nothing else to do for the two years I was President of the Division except work on Mr. Bradley. There were thousands of applications came through there.

I excused myself from any meeting. And I've got two Board members will testify there. They were on the Credentials Committee. I did not participate in any discussions involving Mr. Bradley.

This thing, the newspapers said that I was forced out of the room by the Attorney General. I suppose they grabbed me by the arm, and I'm not a little guy, so it must have been two big guys to force me out of the room.

But I never was forced out of the room or told not to participate. I did not participate.

Let's see. The Board again -- I didn't have anything to do with this. The Division or the staff reviewed his credentials again. My understanding is Mr. Wagstaff said, "Look, there's a confirmation hearing coming up. I want you to review Bradley's files just as if we'd started fresh. Never seen them before, anything else. Review them and see if he qualifies."

The Board did, in effect, say he does qualify.

Now, I'd like to point out, too, to Mr. Grimm, he was Program Manager. He approved Scott Bradley for his FLEX exam. He has to go over all his credentials in order to take the FLEX, the license exam. He approved him. He approved him for the PCY1 program at Ralph K. Davies Medical Center twice, so he was approved twice, his credentials.

Finally, toward the end, when he's ready for his oral, Mr. Grimm said he doesn't qualify. The only conversation I had, I said, "I don't understand how that can be. You reviewed this man twice."

And this is exactly what he's talking about that's bad that the Board does. We've got to make decisions and stick to them. We can't go back and forth, back and forth.

Mr. Wilford, Assistant Program Director, was there. He heard it. He says, "That doesn't sound right to me. I will look into it." He looked into it. They have documents there to show contracts between Olive View and the University of Guadalajara, and they have ruled that the training was proper.

He mentioned a fact he never went to Guadalajara until the third year and didn't qualify. That was Tom Nelson. He went down there, and he started talking that he didn't think it quite qualified. Then, the next meeting, he backtracked. He said, no, he was wrong. He didn't mean to make it that strong that Guadalajara didn't qualify.

And you yourself said that Guadalajara was the best Mexican school.

If we were to listen to Marc Grimm, we would not license any foreign graduates, none, because he has just told you that no foreign school meets the American requirements. He says you can't do this, you can't do that; meets no requirements.

Now, I find it very curious to hear on one hand, he was the Program Manager, has this great power to tell who should or who should not be licensed, who should not come before the Credentials Committee. A person has a right to apply, but in general, he would decide.

No, as he's left employment of the Board, he now represents people before the Board, and his whole attitude has changed. Now he says, "Oh, these are terrible things the Board did," and all this.

He was the person who's responsible for most of it! The Program Manager is the first line of defense. He is the one that approves or disproves. He approved somebody who had never come before the Board at all. We would know nothing about it. It's approved by the Program Manager first. If there's any problem, then they come to us.

Now, I don't know -- and then, even now ,he said that it required contiguous training, and then five minutes ago, he says it's not in the law that we require contiguous training. There's nothing like that in there.

Oh, and then one minor point. I never in the world called him up at the last minute and say, "Bring all the records to my San Francisco office." I've never done that. He did come into my office. He said he wanted to go over an agenda with me, and I said, "You can do it over the phone." "No, Edna Ong and I want to come down there to see you." And the purpose for him coming down was to tell me that he was going -- he was thinking of resigning and Edna Ong would resign with him, too.

Now, with that in mind, I'd like to just -- I know it's getting late. If we have just a few more minutes, I would like to ask two members of the Division to indicate they were at the meetings when the Credentials Committee discussed Dr. Bradley, and I did not participate.

CHAIRMAN ROBERTI: Yes, please.

If there are other witnesses, please come forward.

DR. RIDER: This is Dr. Lungren, who's a member of the Division.

CHAIRMAN ROBERTI: Please come forward, Doctor.

I think Mr. Grimm wanted to say something.

MR. GRIMM: I would just like to make a couple quick comments in closing, and then I don't want to be involved in the process any more. I didn't want to be involved in the first place, again, as you'll find, I think your staff and other people will report.

First of all, let's get this impeachment issue cleared up real quickly on the Zolman case. This is not Mr. Zelman; this is Mr. Zolman, another individual.

The reason that the testimony was impeached is because they were trying Dr. Zolman on the standards of 1984, but the trial was taking place in 1987. So, when they asked, "Is such-and-such allowed," my answer is, "No." But if you went back to 1984 and '85, and looked at earlier transcripts, the answer's yes, because at that time, that was what was being imposed.

The impeachment has to do with the tendency of the Attorney General's Office to try these people historically, and to in any way they can keep out of evidence what's going on today. And there are any number of cases where this is a fact.

That's what all of the conflict in testimony is about. And I've had two law firms here in Sacramento lay all of this out on a timeline, and display it all, and that's exactly what's happened.

In terms of my keeping all the people out of California, it was my negotiation of the stipulated agreement between the Board and the medical schools in the Caribbean that allowed any

of those people to ever get licensed. Because, as Dr. Rider states, you apply the first couple lines of Section 2089 of the Code, there aren't any equivalent schools out there in the world, except maybe West Germany, England, a few places like that, Canada, New Zealand, Australia. So, if you look at it like that, that's true. There are none that really qualify.

But that's what 2089 and 2089.5, when it was amended, was all about. It was to say what's accrued equivalent. And the standard was taken as low as anybody was comfortable with doing, and then that changed.

In terms of the research address, if you'll look back over the testimony when it's transcribed, I said research at an address unknown.

With respect to what Mr. Canon repeated from his own reading of the document, I said, "That's what Mr. Canon said." I don't know anything about it personally. There are other people at the Board who've heard the same comment. Mr. Canon has since denied that.

In terms of Guad. being a bad school or a good school, Guad. is probably the best university in Mexico. And there are people that go through the whole program that stay at the university, that go to California for a Fifth Pathway program I think in every respect meet the minimum requirements in California.

But Dr. Bradley was one of the relatively small percentage who spent a very short period of time in Mexico, left the auspices of the school, migrated about between hospitals in a

very loose, informal program. He's never really taken a full ACGME postgraduate residency. He's participated in an alternative program which is a bit looser and designed differently.

It's not a matter whether it's good or bad for Guadalajara. It's a matter of, it's a school that's loose enough that you can have the top five percenters. And one of their hotshot physicians in Pediatrics is a Guad. graduate right now, a fellow with incredible credentials. But on the other end, we have an ex-Special Forces sergeant go to Guadalajara and spend 12 years getting his medical degree, and the school had no trouble with granting him credit for the nine-year hiatus in the middle. So, that's the problem with the school.

Thank you.

CHAIRMAN ROBERTI: Dr. Lungren.

DR. LUNGREN: Mr. Chairman, Members of the Committee.

Let me identify myself first. I'm a retired physician. I was in the active practice of medicine for 40 years. Incidentally, I was a member of the teaching faculty at UCLA for 27 years. I've been a member of the Licensing Division of the Board of Medical Quality Assurance since August of '85.

My presence before you is in support of Dr. Rider's confirmation.

Now, as a member of the Division of Licensing of BMQA, I've had the opportunity of working very closely with Mr. Rider, and in my personal and professional opinion, I feel that he has been a stabilizing factor in the Division. I believe that this

very beneficial influence emanates from his professional background; namely, he has been in the private practice of medicine for 35 years, a respected physician in the San Francisco Bay Area.

Secondly, Dr. Rider's long medical teaching career in which he has taught hundreds of students from both foreign and domestic medical schools. In all of my professional association with Dr. Rider, his credo has always been first and foremost the patient, the consumer of the State of California.

I would sincerely hope that after your unbiased assessment of the testimony and background evaluation, you will reach an unanimous vote for his confirmation.

Now, as regards Dr. Bradley, I think he's the most scrutinized physician in the United States. He's appeared in more newspapers than the President of the United States.

The actual maneuvering that we did for his confirmation was as follows. There are seven members of the Board. Dr. Rider left the room when we took the vote on Dr. Bradley as to whether we would approve him or not. That's the way the thing happened.

As far as your constant request, do we have counsel all the time, my God, that's -- we can't even do anything until we turn and ask the AG that's there. He's with us all the time, so that they're all made.

SENATOR CRAVEN: I asked that question, Doctor, because there was sort of an insinuation that things were being done erroneously, illegally, or what have you.

And my feeling is that if you have counsel there, counsel is there to protect the Board in their deliberations and make sure that they do things properly. And if they don't, then the counsel would go on record as and advise the Board.

DR. LUNGREN: That's exactly the way it worked.

SENATOR CRAVEN: Thank you very much.

CHAIRMAN ROBERTI: Thank you very much, Doctor.

DR. RIDER: Audrey Melikian is a lay member of the Board.

CHAIRMAN ROBERTI: Audrey Melikian we know. Please come forward.

MS. MELIKIAN: I'm Audrey Melikian, and I'm a public member on this Board of Licensing.

I did appear in February the 2nd, I believe, with my reconfirmation for the Licensing Division of BMQA.

I'm here today, and this is the second time I drove up from Fresno, because I believe that the reconfirmation of Dr. Rider should be done.

This seems to be sort of a confusion. And we can't ever do anything on this committee because we have counsel, we have executive officers. I mean, we bring -- we have our own U.S. graduates who have to go through a program.

So, when we get any others that come in, or anything of any sort, why then, we have to scrutinize exactly what they have done. And if there's something that we can fit in that they have done, we will try to fit that in so that they can get a license.

We're not discriminating anyone. We want to be fair.

And yet, as a public member, I want to make sure that the doctors we do license are -- have followed what we require ourselves.

And at this time, I feel that Dr. Rider has helped me a lot to explain certain things, because being a public member, I wasn't that aware of all the things that went on through the licensing of doctors. And I've learned a lot from him. He's always caring and always makes sure that I understand what it is. And I thank him for that.

And I do feel that I think we should, if at all possible, and I do hope that you would consider to reconfirm Dr. Rider.

Thank you very much.

CHAIRMAN ROBERTI: Thank you very much, Ms. Melikian.

Former Senator Al Song.

MR. SONG: For the record, Mr. Chairman, I'm Al Song, presently a public member of the Board of Medical Quality Assurance.

I appear here today, gentlemen, in support of Dr. Rider's confirmation. Some of my remarks may appear to be somewhat personalized, but I assure you, gentlemen, of their germaneness.

In the late '60s, when I chaired the Senate Committee on Business and Professions, I received over a substantial period of time numerous inquiries from Californians who had either graduated from the medical school at the Autonomous University of Guadalajara, or who were then matriculated at that medical school.

Their appeal was a common one, "It's extremely difficult for us to gain licensure in the State of California. Is there something that you, as a Legislator, might be able to do to make it somewhat easier for us to ultimately attain this ambition," and that is to become a doctor of medicine.

So, during one of the interims, Mr. Chairman, I led the B&P Committee, and the Committee was then augmented by a couple of members of the Assembly. And I remember that Gordon Duffy was one of them.

We held an interim hearing on the campus of this university in the city of Guadalajara. I attended the classes. I listened to the lecturers. I saw the students in the various laboratories. And Mr. Chairman, I will say this without any hesitancy, that my heart at that time went out to these students from California who, for a variety of reasons, were unable to gain admission to a school in California or in some other state of the Union.

The lectures were given in the Spanish language. These students, on the whole, were not conversant with the Spanish language. Their texts, the texts that they used, imagine, for example, in a course of Human Anatomy, was a Grey's Anatomy in the English language and a copy of the Grey's Anatomy in Spanish. The lectures were all in Spanish.

Somehow, a substantial portion of these students persevered. They graduated, then they returned to California, hoping somehow to become a licensed physician and surgeon of this state.

I make mention of this for this limited reason, gentlemen, and that is that if it is true that Dr. Rider did take an interest in a graduate of the Guadalajara Medical School, I would say to you it would be an understandable interest, because I, too, took an interest in many, many of their graduates.

The question, however, is this, and I regret to say that I've been here -- this is my second day -- and I realize that the hour is late, Mr. Chairman. I have witnessed Dr. Rider and the Board of Medical Quality Assurance of the State of California being placed on trial before this body. The Medical Board, as referred to by Mr. Grimm, is not Dr. Rider's Medical Board. He is but one, single member of it.

Dr. Rider did not personally license Dr. Bradley. It was the Division of Licenses of the Board of Medical Quality Assurance.

I've listened to Mr. Grimm, and frankly, I had difficulty following him, however patient and objective I tried to be. I submit that his presentation, obviously, was replete with righteous indignation, with ill-contained anger and emotion.

I understand, from the questioning of Senator Craven, that Mr. Grimm is not an attorney. It's been disclosed also that he is not a physician. It has also been revealed during the course of these proceedings that he was on the staff. He held the responsible position of Program Manager, then eventually was forced to accept a transfer to another department.

In effect, it would appear to me, and I simply express my personal opinion, that he sounds like a disgruntled, unhappy, former employee.

Mr. Chairman, I have examined the papers involving the Bradley case. These are facts which simply bear out some of the conclusions I drew on the occasion of my personal trip to the medical school at Guadalajara.

That medical school, in my opinion, was a fine medical school, Mr. Chairman, but obviously lacking in adequate clinical facilities. This is a conclusion that this Board has drawn, and because this situation is quite true.

Now, Scott Paul Bradley first filed his application for the purpose of securing a physician's license in the State of California on March 6, 1984. He was actually granted -- it was not the actual license, but the next step to it, because the Credentials Committee of the Board of the Division of Licensing, on March 11, 1987, three years later, Mr. Chairman and Members, and this is signed by Dr. Gough, who was then Chairman of the Credentials Committee. Credentials Committee decision, and I quote:

"Accept above recommendation:

Clerkships are acceptable.

Proceed to licensure."

It took all of three years, Mr. Chairman.

I've talked not only with just Dr. Rider, but the other members of the Division. None of them are able to recall anything that might in the slightest way be considered irregular or improper as far as the proceedings that were followed, ultimately resulting in the licensure of Dr. Bradley.

I have learned absolutely nothing about anything that would suggest the slightest bit of irregularity or impropriety on the part of Dr. Rider with reference to the licensure of Dr. Bradley.

I have now served, Mr. Chairman and Members, on this Board for nearly seven months. As you know, I am a public member appointee of the Governor. I have not missed a meeting of the Board during this period of time. I find myself greatly interested in the proceedings of this body. Dr. Rider has missed not one meeting.

I can conclude, as I have, that Dr. Rider is an honest man, a hardworking man, who takes his responsibilities as a member of this important Board very, very seriously.

He is also a fair and objective man. He is a kind man. He's a decent man.

Mr. Chairman and Members, I urge that this Committee vote for his confirmation.

I thank you.

CHAIRMAN ROBERTI: Thank you very much, Senator.

Senator Watson.

SENATOR WATSON: Mr. Chairman and Members, I don't even know Dr. Rider, but I'm here to support his confirmation.

We have a -- he has a mutual colleague, and I have an orthopedic surgeon that I have known since childhood. And he has told me that Dr. Rider has been a mentor to him. He's a man of integrity; he's a man of fairness.

And that compelled me in such a way for me to come and spend an hour here, waiting my turn, because I thought it was important that he be reconfirmed to continue to serve out his term on the Board.

I don't much about him. I'm not trying to get into the middle of the arguments. I tried to follow them. They sounded very technical, and it's the kind of thing that comes up when you have close working relationships, staff, administration, Board members, et cetera. I can't even comment on that issue.

But I have the greatest amount of respect for my orthopedic surgeon, and he has contacted me on several occasions on behalf of Dr. Rider. And I just wanted to come and share that with the Members of this Committee.

CHAIRMAN ROBERTI: Thank you very much, Senator.

Senator Craven.

SENATOR CRAVEN: Mr. Chairman, may I ask that we hear just briefly from Mr. Wagstaff?

CHAIRMAN ROBERTI: Yes.

We're going to recess for five minutes, then we'll hear from Mr. Wagstaff.

(Thereupon a brief recess was taken.)

CHAIRMAN ROBERTI: Committee will come to order.

Mr. Wagstaff.

MR. WAGSTAFF: I'd be happy to answer any questions.

SENATOR CRAVEN: Ken, I really didn't call you up here to ask you particular questions, but because you were the senior to the gentleman who testified. I thought it may be well to have

some expression from you as to either the veracity, correctness, or whatever, of some of the comments he made.

Obviously, you have your own thoughts, and perhaps you could share them with us.

MR. WAGSTAFF: I tried to take notes, and after awhile, I kind of fell behind about an hour and a half there.

Well, I think that the most important thing to me, as a person who used to be a member of the staff of this Legislature, is that the Legislature, and particularly the Rules Committee of the Senate, recognize how seriously we take our jobs. I'm not only speaking for myself, but I'm speaking also for Board members.

We have met many times with members of the Attorney General's staff, with counsel from the Department of Consumer Affairs, and have reviewed our responsibilities, and the awesome fact that we sit in judgment as to who can get licensed and who can't, and who will be disciplined and who isn't. So, we take it very seriously.

After 24 years -- it may be more like 23 years, working for the State, I take my job very seriously. And I speak to you with all respect.

I think that you have here about 90 percent interpersonal difficulty, where a Board member who cared very much about making sure that all applicants are given a break if that break is possible, particularly if they come out of a training system which, as Senator Song pointed out, this Legislature has taken an interest in, which is the system that we worked out with the University of Guadalajara.

I think that Dr. Rider has spoken many times in the Division about the fact that the Board should not throw up barriers, and that if people can't present certain documents, maybe there are others. Maybe there is a way for them to provide other official verification. We've tried to do that.

I think that's -- 90 percent of it is, I think, emotional. Ten percent of it has to do with your perspective. That is, when Marc worked for us, he was very interested in detail and very insistent that something be done to prevent the licensure of people who didn't meet every specific test.

I have to say that when I heard him describing the hoops that you have to jump through to become licensed in California, how difficult this can be for some people, and how bureaucratic it is, I mean, that -- that's the kind of system that I think he used to present consistently to the Division.

And I think we've learned now to accommodate more through the device of special legislation, and in particular a bill which I think Dr. Rider was the main spokesman for for the Division, which was a bill that would allow people to take -- to get credit for their postgraduate training. To be able -- when they do postgraduate work in this country, for that to count against things they might not have taken in their host -- in their home country. And that bill was sponsored by the Division, and Dr. Rider pushed hard for it.

Now, there is, on this Bradley matter, it's important to say a couple of things for the record, because I know this Committee keeps a record. And I wanted to say a couple things about it.

Number one, that the decision to license Dr. Bradley was not made by Dr. Rider. That decision was made by the Credentials Committee of the Division, and I think that Dr. Rider clearly understood that because he had participated in a portion of Dr. Bradley's training, that he should not be present, and he was not.

Number two, because of the continuing concern that Marc was generating over this whole thing, I took upon myself, with the encouragement of the Board President at the time, to ask our counsel at the Department of Consumer Affairs whether this gentleman had been legally licensed, and the response was yes.

Now, I don't run the technical details of licensing. Now, we have a manager for that. Marc was that manager for a number of years. We have a new manager here. She's right here in the second row, and I know she was following these deliberations very closely. And when it came to the -- and she could identify with a lot of the things that Marc was saying about the technicalities.

I can't. I don't understand some of the technicalities. I don't pursue them.

But on this issue, I tried to be sure that Mr. Wilford, who was then my Assistant Executive -- tragically, he passed away -- I think if he were here today, what he would say is that he took it upon himself to look into this man's training and really find out if we were being fair to exclude clinical clerkships that had been excluded previously. And I think he found out we weren't being fair. And then he relied on the expertise of

Dr. Gough to be sure that the Guadalajara clinical clerkships were appropriate.

The third thing I would say -- I've said something about the decision was not made by Dr. Rider. Second, that the license was legal. Third, I want to say that if this Committee, or by delegation any other Member of any other Committee of the Senate, would like me, as the Executive of the Board -- and I take my responsibilities as, in effect, delegated from the Legislature through the Board -- but if you would like us to investigate the circumstances of the issuance of any license, I can do so. We have a Division of Medical Quality who have the responsibility, if a license is issued in error, to revoke it. And there could be an investigation.

I should point out to you that we have cooperated completely with your Committee investigators.

CHAIRMAN ROBERTI: I'm planning to vote for Dr. Rider's confirmation.

However, there is an area of concern, and that is that it does sound to a person just listening that Dr. Bradley's course was made easier. And the only other case that I can put in juxtaposition to that was the case that Mr. Zelman talked about, testified about, rather, and it did seem that she had been put through a number of hoops, including the fraud charge, after she had been led on to believe that she had been completing all the requirements that were necessary.

I don't doubt that everyone on the Board takes his or her position very seriously. But something comes through this strain of arbitrariness.

I don't think it has been successfully laid at the doorstep of Dr. Rider, and that's why I intend to vote for his confirmation. But I am concerned about the Board practices. And I am concerned that policies that the Legislature has laid down, that seemed to indicate there has to be a degree of liberalization toward foreign graduates, may not be implemented except -- I'm giving the most extreme case here -- except on a catch-as-catch-can basis, depending on who you know, who your teacher might have been, and whether the teacher chose to exercise influence or not, that influence may be there.

MR. WAGSTAFF: Senator, can I respond?

CHAIRMAN ROBERTI: Yes.

MR. WAGSTAFF: With every -- I mean, with every ounce of sincerity I can muster, I have to tell you that it would be a mistake if this Committee tried to arrive at a policy inference from two very, very unusual situations among 4,000 licenses issued every year.

Ms. Goldfarb, I never met her. I believe, if I'm not mistaken, and perhaps our license manager can correct me if I'm wrong, but I believe that she went to CETEC University originally, in the Dominican Republic. That was closed by the government of the Dominican Republic as a corrupt institution. And I want to point out that that gave her a very poor start in the whole process of licensure.

And this business about the fraud, I don't know about that. I'd have to consult with our attorney.

CHAIRMAN ROBERTI: Yes, I wish we could review all of the testimony.

MR. WAGSTAFF: On the other hand, the Bradley matter, if I may, that again was very unusual, extremely unusual because the man came before the Credentials Committee at a time that we were just on the verge of sending our group into Mexico to look. And the issue was, do you go on the old rules, and just like hundreds of other people, having been trained in Guadalajara and given credit for their clinical clerkship there, or do you hold a person up, and then take a look at what Dr. Nelson was doing?

CHAIRMAN ROBERTI: My concern is, and I'd like for you to review the testimony that we have on the record --

MR. WAGSTAFF: Yes.

CHAIRMAN ROBERTI: -- is that the indications were given -- and now, it's the first I've heard that her name was Dr. Goldfarb -- that she had successfully completed the requirements, and there was a problem with the school. I think she did indicate that in her testimony.

But the fact is, she, if the testimony is correct, was led to believe that every step of the way she was completing the requirements as designated by BMQA, only to be thwarted every time, "Ah-ha! There's one more hurdle to go through," and the ultimate hurdle was a criminal charge for something that really seems to be harassment.

I mean, all of a sudden, it appears that the Board has been putting itself in a position of not liking the law and doing everything it can to thwart the liberalization in this area.

Whether that's good or not, it --

MR. WAGSTAFF: Senator, I have to tell you for the record that 25 percent of the people that we license now, and it's creeping up more toward 27 or 28 for the coming year, are people trained outside the United States, from all over the world.

CHAIRMAN ROBERTI: That's a good figure to know, only because it indicates that maybe the policy is being followed.

MR. WAGSTAFF: We're trying to do something.

DR. RIDER: Senator, that's why I helped sponsor legislation to use additional training to make up deficiencies. I've been for that.

I agree with you a hundred percent, we shouldn't have these things happen. And I feel very badly when those happen.

But some of these cases started at the Program Manager's level and never got to the Board. And all of a sudden, there's an investigation. This is what drove me up the wall.

MR. WAGSTAFF: I would like to give the Committee a full report, with the assistance of the Attorney General, because they have been prosecuting the Goldfarb matter. And I hope I have the right name.

Terry, Goldfarb? Have I used the wrong name on the record? I think that's correct.

We will provide the Committee, because there's been this interest, and I'm very concerned, particularly from the President of the Senate. I mean, I want you to know we will, with the assistance of the Attorney General's Office that's handling that case, we will provide you with a full report on that.

CHAIRMAN ROBERTI: Thank you very much.

MR. WAGSTAFF: I think that should clear some of that up.

And as far as the Bradley matter goes, we have answered 23 questions in four letters from your investigative staff, who have done a very thorough job. If there's anything else you would like to know, we'll cooperate with the Auditor General or anybody else.

CHAIRMAN ROBERTI: Thank you.

There are other witnesses here. If you could just come forward and indicate your support.

DR. RIDER: Why don't we ask Dr. Bradley to come up, just to identify himself.

CHAIRMAN ROBERTI: Yes, you're a famous person now.

DR. RIDER: The most famous person in California.

SENATOR CRAVEN: You're now vying with Louis Pasteur.

DR. BRADLEY: Senator Roberti and distinguished Members of the Committee.

I originally finished college at Marin. I went two years to the University of California at Berkeley. I went through two years at the University of Southern California. I applied to United States medical schools.

I had very moderately good grades, approximately a B average. When it became apparent that I would not get into a United States school, I applied to Guadalajara, as did a lot of Americans and a lot of Californians who are now licensed and practicing in this state from Guadalajara.

I graduated in 1981. At the time I graduated, I -- Guadalajara was an approved program; all parts of it were approved. I did my third year, that Mr. Grimm questioned, in 1979. The questions raised -- were raise din 1985.

I then had the choice of doing what's called a Fifth Pathway, or seeking my licensure through completing the requirements for licensure in Mexico. I chose the second route, probably because of my mother's health and the need to be on the West Coast. She was dying of cancer at the time, and I could be with my father and my father, work part-time in his plumbing business, and still try to complete the rest of my requirements.

I completed an Internado in social service. Subsequently received my Acta and my Titulo from the University of Guadalajara of Mexico.

I was approved to take the FLEX exam in 1984. At that time, apparently, my credentials were in order. As Mr. Zelman has testified the previous time, I felt quite akin with him and all the stuff that his wife had to go through.

In reviewing Mr. Grimm's rather lengthy and complicated and confusing testimony today, I can hardly comment on anything he said, except that all the hoops, all the obstacles that Mr. Zelman's wife was required, I did, as well as the other foreign graduates in this room have accomplished.

I had to have certified transcripts of all my clerkships. I had to fly to Los -- this was after my application was originally approved. I was then notified by the Board that I -- my application was not approved. I had to go down, hire a

Notary Public, go two days in a private auto, and drive to all my previous professors and get certified, notarized copies of my clerkships. And I turned those in, everything was fine.

Then I was -- took the second part of my exam for licensure, the ECFMG. I passed that exam, and then I was told I was deficient in Psychiatry. I went back, and I corrected that deficiency at an approved program, approved by the State, by the Division of Licensing.

Everything was fine, then I was told that my diploma, which was written in Latin, I needed a certified translation of it. I contacted a friend of mine who was a Professor of Latin at the University of San Francisco, one of the fathers. He translated it for me. I turned it in to Mr. Grimm. He told me this gentleman was not a certified Latin translator.

There are not a lot of them in the State of California, by the way. As far as obstacles, I completed that obstacle. I found a gentleman who was 92 years old in Los Angeles who worked for Berlitz who still had a license that said he was a certified Latin translator.

CHAIRMAN ROBERTI: Has the Board changed that requirement?

DR. RIDER: If that had come to my attention, I'm willing to accept the Professor at USF.

DR. BRADLEY: I am in general practice in a recently designated Medically Underserved Area.

I really object to Mr. Grimm's comments about, gee, they have to go down and practice in Los Banos. What's wrong with

Los Banos? I practice in Groveland, California. It's a rural area. We're 45 minutes from the nearest hospital.

I am on the Tuolumne County Medical Society, the California Medical Society, the American Medical Association, the Christian Medical Association.

I have staff privileges at Tuolumne General Hospital, Sonora Community Hospital, Doctors Hospital in Manteca, and St. Joseph's Hospital in Stockton. And I am licensed to practice medicine in California and Utah.

Recently I was awarded a Distinguished Service Award from the U.S. Forestry Service for my help during the Stanislaus Complex Fire. My wife, who is an R.N. at the time, and I worked directly on the fire line, taking care of the wounded firefighters.

I am also a FAA medical examiner.

I take a lot of objection to what Mr. Grimm had to say about rural practice. I have pages and pages of notes here, as that counsel for the Board noted, and I can't keep track of everything he said..

I do believe, like Dr. Lungren has said, I have been the most scrutinized person in the history of the Board. I am guilty by association only.

I would have to say there's probably no one within the United States that knows foreign medical education better than Dr. Rider, and I think the people in this audience can attest to that.

Thank you.

CHAIRMAN ROBERTI: Thank you very much, Dr. Bradley.

DR. RIDER: A couple quick more people.

CHAIRMAN ROBERTI: Yes, Doctor.

DR. RIDER: Dr. Olivares.

DR. OLIVARES: Senator Roberti and Members of the Senate Rules Committee.

First of all, I wish to thank you for allowing me to appear on behalf of Dr. J. Alfred Rider.

My name is Dr. Lourdes Olivares-Aycaoili. I was born in the Philippines and I obtained my medical degree at the University of Santo Tomas in Manila, the Philippines.

I'm sorry, my voice is hoarse today.

I am currently affiliated with the University of California in San Francisco as Associate Clinical Professor of Medicine and Director of the Student Health Services.

I have known Dr. Rider since 1955, when I was supervised -- he supervised my training as a clinical research fellow in gastroenterology at the University of California in San Francisco. He was an excellent and dedicated teacher, always honest and fair in his dealings with the medical research fellows, whether they be foreign medical graduates or U.S. graduates.

Not for one moment did I feel that I was being discriminated upon. On the contrary, I found Dr. Rider to be very supportive, and he encouraged me to achieve greater goals.

In 1957, he sponsored my admission to the American Society of Gastroenterologists. I have the honor of being the first Filipino physician to be admitted into this society.

After my three years' research fellowship in gastroenterology, I was recommended for faculty appointment as clinical instructor. Again, Dr. Rider supported my promotion.

Last year, I was elected the first woman president of the Philippine Medical Society of Northern California. During the presidential installation at our Society's 60th inaugural ball, I invited Dr. J. Alfred Rider to be the guest speaker for the evening.

I am proud of my mentor and teacher, and I have the greatest respect for him as a gentleman and a scholar.

I sincerely hope that this Committee will reconfirm his appointment to the Licensing Division. Like the rest of the foreign medical graduates who are here with me today to speak in his behalf, I believe that he's truly deserving of this position.

And I thank you for giving me this opportunity to speak in his behalf.

CHAIRMAN ROBERTI: Thank you, Dr. Olivares.

DR. PULETTI: Mr. Roberti, Members of the Senate Committee, my name is Ernesto Puletti. I was born in Argentina, Buenas Aires, and I attended medical school, and I graduated in 1955.

I came to this country in 1956. Then, after I got my license, I became an Assistant Clinical Professor of the University of California at San Francisco, and I still hold that title. Also, I am a Chief of the Department of Digestive Diseases at Family Hospital in San Francisco, and I have been the Chief for the past four years. And also, I am a Commissioner of the Board of Medical Examiners in the State of California.

I trained under Dr. Rider in 1957 to '58, and 1959 to 1960. During the training with Dr. Rider, he gave us an excellent example. One of the things I can remember him for his intolerance to laziness, ineptitude, incompetence, and irresponsibility. For Dr. Rider, those were sins that could not be tolerated and were not tolerated.

To the very few resident interns who were medical students that could not measure up to his high standards, Dr. Rider had very fast and quick advice, the same advice that your President Truman used to give: If you can't stand the heat, get out of the kitchen.

Then, after staying with Dr. Rider for training -- and I should not say training. I should say education, because Dr. Rider did not train me; he educated me to become a competent and caring physician, which I think this is what I am today.

Then the scene today, stating that Dr. Rider lowered the standards to accept medical graduates. After working for him for years and knowing his high standards, I feel that is very hard to believe, the statement, for me.

So, here I am, in the Senate Committee today, to testify for Dr. Rider.

For myself, it's a public -- public homage to Dr. Rider as a considerate human being, as a topnotch scientist and educator, and last and not least and above all, to a caring and compassionate physician who never, never looked at the patient's color of his skin or to his pocketbook to do for him the very best he was capable of.

Thank you.

CHAIRMAN ROBERTI: Thank you very much, Doctor.

DR. RIDER: Dr. Trapalis is from Guadalajara, and I thought he might like to talk about the third year briefly.

CHAIRMAN ROBERTI: Yes, please come forward. State your name.

DR. TRAPALIS: I'm Andreas Trapalis, a physician here in Sacramento.

I just want -- I know it's kind of late. Everybody's looking at their watches. I was observing everybody from down there.

I just want to tell you that I am a graduate of Guadalajara. I'm not going to go through the sad story of how I lived out there, you know, on the side. But something's got to be clarified about the University of Guadalajara that was very confusing by Mr. Grimm earlier. And that is in our so-called clinical years, that is the third and fourth year, you are given the option by the University if you want to stay in Mexico, in Guadalajara, and do your clinical studies, or come to an American hospital. Most of us, of course, you know, we'll take the later one. We will come here to be here to be near the people that we know and our friends, and everything.

Before that is granted, though, you have to come here and find the hospital that is accredited and it is affiliated with a university, take it back to Guadalajara for them to approve it. Nobody, in other words, can come over here, go up to Lake Tahoe and sit for a couple or six weeks and go back and get

credit for that course. Therefore, all of them had credit by the University.

The same happens for your seventh and eighth semesters. And each one is an individual course: Obstetrics/Gynecology, Pediatrics, whatever the case may be.

That would give you, of course, the degree in Guadalajara. Not a license to practice, but a degree.

Now, in order to get licensed to by a physician in Mexico, you either have to do a year of social service and then your internship, or, for the Americans, because they know most of them will not stay in Mexico, will come back in the U.S., they give them the option to come to the U.S. in an accredited school or university and do a year of rotating internship. Of course, all of us have to find that, or take another option, which is again is going to be confusing if I try to explain it, because even most of us do not understand it even now, it's the so-called Fifth Pathway, which is essentially a clerkship.

The one -- I must say, though, that without Dr. Rider's assistance, some of the medical students and foreign graduates that were physicians would not be -- or have received the education they received without his assistance. And that is, he gave us a chance at least to be able to get some clinical experience here in the United States.

A more dedicated person, I think, a more passionate person we could have found anywhere in the area here, and especially here in California, because it's one of the stricter states to get any kind of clerkship or license. But yet, we had

to do our part. We had to be aggressive, and yet he was on top of all of us all the time.

That's why I'm here today. At least not all Guadalajara students are lazy. I was initiated earlier, and I resent that we did not get any clinical experience in our third or fourth year, as was indicated by Mr. Grimm.

I noticed that -- I must say, I noticed that someone here in the Committee kept bringing up the student that was from the West Indies University. There is -- the reason that student was scrutinized, and again, either was hidden or not brought up, is because they caught 10-12 students over there that were given a degree. They paid $50,000 and they received a diploma and came here. And I think the first student was caught by the Board of Examiners here in the State of California. And that is the reason that they have been scrutinized, and that's how all this case started with later students. And I think that's how everything got started with Bradley, Dr. Bradley, with being scrutinized in the sense that every one of his professors had to sign his name on a piece of paper saying, "Yes, he was in that class," during that sixth or fourth semester. It all started with the Dominican Republic students.

CHAIRMAN ROBERTI: Thank you very much, Doctor.

DR. TRAPALIS: You're welcome.

DR. RIDER: Senator Roberti, if I could just have three people stand up. They came all the way up here.

CHAIRMAN ROBERTI: Please do that. Why don't you give your names and let us know you're here.

DR. BONILLA: I'm Luis Bonilla from El Salvador. I am a physician from El Salvador and actually I am practicing medicine in this state, thanks to the efforts of Dr. Rider, that I consider has been my best professor, really.

I would like to say something.

CHAIRMAN ROBERTI: Thank you, Doctor. Thank you for coming, Doctor. We'd love to hear from you, but it's eight minutes to six.

DR. LORENTE: My name is Foresti Lorente. I am from Buenas Aires, Argentina. I am practicing here in California at this moment.

Dr. Rider encouraged me to pursue a license and helped me with that.

CHAIRMAN ROBERTI: Thank you very much, Doctor.

DR. BREDER: My name is Alice Breder. I am originally from Czechoslovakia.

I was a student four years ago. I am just about to finish my program and classes. I just cannot agree with all these things that everybody said about Dr. Rider.

CHAIRMAN ROBERTI: Thank you very much.

Doctor, I take it they're your rebuttal?

DR. RIDER: Yes, sir.

CHAIRMAN ROBERTI: Do I hear a motion?

SENATOR CRAVEN: I would like to have the pleasure of moving the confirmation of Dr. Rider to the Floor.

CHAIRMAN ROBERTI: Senator Craven moves Dr. Rider's confirmation be recommended to the Floor.

SENATOR PETRIS: I'll waive my speech.

CHAIRMAN ROBERTI: Senator Petris waives his speech, please.

Secretary will call the roll.

SECRETARY WEBB: Senator Beverly.

SENATOR BEVERLY: Aye.

SECRETARY WEBB: Senator Mello. Senator Petris.

SENATOR PETRIS: Aye.

SECRETARY WEBB: Senator Craven.

SENATOR CRAVEN: Aye.

SECRETARY WEBB: Senator Roberti.

CHAIRMAN ROBERTI: Aye.

The vote is four to nothing; confirmation is recommended to the Floor.

(Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 5:53 P.M.)

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of May, 1989.

EVELYN MIZAK
Shorthand Reporter